

Tab 1	SB 268 by Brodeur ; (Similar to CS/H 01413) Health Care Expenses					
Tab 2	CS/SB 272 by CF, Garcia (CO-INTRODUCERS) Osgood, Perry, Book ; (Similar to CS/CS/H 01101) Education for Children and Young Adults in Out-of-home Care					
633058	A	S	RCS	AHS, Garcia	Delete L.18 - 29:	04/18 11:51 AM
415676	AA	S	RCS	AHS, Harrell, Garcia	btw L.4 - 5:	04/18 11:51 AM
Tab 3	CS/SB 344 by HP, Brodeur ; (Similar to CS/CS/H 00387) Physician Certifications for the Medical Use of Marijuana					
Tab 4	CS/SB 366 by MS, Burgess (CO-INTRODUCERS) Perry, Gruters ; (Similar to CS/H 00635) Dental Services for Indigent Veterans					
Tab 5	CS/SB 858 by HP, Torres (CO-INTRODUCERS) Wright, Avila, Brodeur, Simon, Powell, Stewart, Osgood, Thompson, Collins, Davis, Harrell, Book, Jones, Garcia ; (Identical to CS/CS/H 00139) Benefits, Training, and Employment for Veterans and their Spouses					
Tab 6	SB 1084 by Trumbull ; (Similar to H 00831) Long-term Managed Care Program					
650886	D	S	RCS	AHS, Trumbull, Harrell	Delete everything after	04/18 11:45 AM
Tab 7	CS/SB 1338 by HP, Martin ; (Similar to CS/CS/H 00615) Massage Establishments					
265348	A	S	RCS	AHS, Martin	Delete L.239 - 246:	04/18 11:46 AM
258224	A	S	RCS	AHS, Martin	btw L.475 - 476:	04/18 11:46 AM
Tab 8	CS/SB 1540 by CF, Garcia ; (Similar to CS/CS/H 01567) Elder Abuse and Vulnerable Adult Abuse Fatality Review Teams					
Tab 9	CS/SB 1542 by CF, Garcia ; (Similar to CS/H 01569) Public Records and Public Meetings/Elder Abuse or Vulnerable Adult Abuse Fatality Review Team					
Tab 10	CS/SB 1548 by HP, Bradley ; (Similar to H 01503) Children's Medical Services Program					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
APPROPRIATIONS COMMITTEE ON HEALTH AND HUMAN SERVICES
Senator Harrell, Chair
Senator Garcia, Vice Chair

MEETING DATE: Tuesday, April 18, 2023

TIME: 8:30—11:30 a.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Harrell, Chair; Senator Garcia, Vice Chair; Senators Avila, Baxley, Book, Bradley, Brodeur, Burgess, Burton, Calatayud, Davis, Gruters, Martin, Osgood, Rouson, and Simon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 268 Brodeur (Similar CS/H 1413)	Health Care Expenses; Establishing a 3-year statute of limitations for an action to collect medical debt for services rendered by a health care provider or facility; providing additional personal property exemptions from legal process for medical debts resulting from services provided in certain licensed facilities; requiring a licensed facility to post on its website a consumer-friendly list of standard charges for a minimum number of shoppable health care services; requiring each health insurer to provide an insured with an advance explanation of benefits after receiving a patient estimate from a facility for scheduled services, etc. HP 04/04/2023 Favorable AHS 04/12/2023 Temporarily Postponed AHS 04/18/2023 Temporarily Postponed FP	Temporarily Postponed
2	CS/SB 272 Children, Families, and Elder Affairs / Garcia (Similar CS/CS/H 1101)	Education for Children and Young Adults in Out-of-home Care; Requiring a case manager or other staff to provide a child with verbal and written information about certain topics; deleting limitations on the type of questions a child may ask; establishing the Office of the Children's Ombudsman within the Department of Children and Families; requiring the department to consult with specified children and young adults when creating or revising certain print or digital written information, etc. CF 04/04/2023 Fav/CS AHS 04/18/2023 Fav/CS FP	Fav/CS Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Committee on Health and Human Services
Tuesday, April 18, 2023, 8:30—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/SB 344 Health Policy / Brodeur (Similar CS/CS/H 387)	Physician Certifications for the Medical Use of Marijuana; Authorizing qualified physicians to perform patient examinations and evaluations through telehealth for renewals of physician certifications for the medical use of marijuana, subject to certain conditions; authorizing the Department of Health to suspend the registration of a qualified physician in the medical marijuana use registry for a specified timeframe for noncompliance with the act, etc. HP 03/27/2023 Fav/CS AHS 04/18/2023 Favorable FP	Favorable Yeas 16 Nays 0
4	CS/SB 366 Military and Veterans Affairs, Space, and Domestic Security / Burgess (Similar CS/H 635)	Dental Services for Indigent Veterans; Establishing the Veterans Dental Care Grant Program within the Department of Veterans' Affairs; requiring the department to contract with a direct-support organization to administer the program; requiring the department to use a specified standard for determining indigency, etc. MS 03/29/2023 Fav/CS AHS 04/18/2023 Favorable AP	Favorable Yeas 16 Nays 0
5	CS/SB 858 Health Policy / Torres (Identical CS/CS/H 139)	Benefits, Training, and Employment for Veterans and their Spouses; Requiring the Economic Development Programs Evaluation to include a periodic analysis of the Veterans Employment and Training Services Program; revising the duties of the Department of Veterans' Affairs and Florida Is For Veterans, Inc., respectively, to include the provision of certain assistance to veterans' spouses; requiring the Department of Health to waive certain fees for veterans and their spouses under certain circumstances; establishing the Office of Veteran Licensure Services within the Division of Medical Quality Assurance, etc. HP 04/04/2023 Fav/CS AHS 04/18/2023 Favorable FP	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Committee on Health and Human Services
Tuesday, April 18, 2023, 8:30—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 1084 Trumbull (Similar H 831)	Long-term Managed Care Program; Requiring the Agency for Health Care Administration to select, through a specified procurement process, a qualified long-term care plan to implement a pilot program in Miami-Dade County to provide coverage of comprehensive services for Medicaid recipients who have developmental disabilities; providing requirements for the pilot program and the selected qualified plan; requiring the agency to contract for an independent evaluation of the performance of the plan, etc. HP 04/04/2023 Favorable AHS 04/18/2023 Fav/CS FP	Fav/CS Yeas 15 Nays 1
7	CS/SB 1338 Health Policy / Martin (Similar CS/CS/H 615)	Massage Establishments; Authorizing the Department of Health to immediately suspend the license of massage therapists and massage establishments if the massage therapist or certain individuals connected to the massage establishment are arrested for, convicted or found guilty of, or enter criminal pleas to specified violations; authorizing specified enforcement officers to perform inspections and investigations of massage establishments for specified purposes; revising certain rules the board is required to adopt; prohibiting sexual activity and certain devices in massage establishments, etc. HP 04/04/2023 Fav/CS AHS 04/18/2023 Fav/CS FP	Fav/CS Yeas 16 Nays 0
8	CS/SB 1540 Children, Families, and Elder Affairs / Garcia (Similar CS/H 1567, Compare H 1569, Linked CS/S 1542)	Elder Abuse and Vulnerable Adult Abuse Fatality Review Teams; Authorizing the establishment of elder abuse and vulnerable adult abuse fatality review teams in certain areas and for certain purposes; authorizing a review team to determine the number and types of incidents to review; modifying a prohibition against contacting, interviewing, or obtaining information from the family of a victim; providing construction; providing that oral and written communications, information, and records acquired by a review team are not subject to disclosure, discovery, or introduction into evidence in certain proceedings under certain circumstances, etc. CF 04/04/2023 Fav/CS AHS 04/18/2023 Favorable FP	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Committee on Health and Human Services
Tuesday, April 18, 2023, 8:30—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	CS/SB 1542 Children, Families, and Elder Affairs / Garcia (Similar H 1569, Compare CS/H 1567, Linked CS/S 1540)	Public Records and Public Meetings/Elder Abuse or Vulnerable Adult Abuse Fatality Review Team; Specifying that information obtained by an elder abuse or vulnerable adult abuse fatality review team which is exempt or confidential and exempt from public records requirements retains its protected status; providing an exemption from public records requirements for personal identifying information of an abuse victim and other specified information contained in records held by a review team; providing for future legislative review and repeal of the exemption; providing statements of public necessity, etc. CF 04/04/2023 Fav/CS AHS 04/18/2023 Favorable FP	Favorable Yeas 16 Nays 0
10	CS/SB 1548 Health Policy / Bradley (Similar H 1503)	Children's Medical Services Program; Deleting a requirement that the Department of Health consult with the Department of Education before prescribing certain newborn testing and screening requirements; authorizing the release of certain newborn screening results to licensed genetic counselors; revising newborn screening requirements for licensed birth centers; revising the purposes and functions of the Children's Medical Services program, etc. HP 04/04/2023 Fav/CS AHS 04/18/2023 Favorable FP	Favorable Yeas 16 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

BILL: SB 268

INTRODUCER: Senator Brodeur

SUBJECT: Health Care Expenses

DATE: April 11, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	Favorable
2.	McKnight	Money	AHS	Pre-meeting
3.			FP	

I. Summary:

SB 268 amends and creates multiple sections of law in order to limit how hospitals and ambulatory surgical centers (ASC) may collect medical debt and to exclude certain property from being collected through legal action on such debt. The bill prohibits certain billing and debt collection practices and limits legal actions on medical debt to three years after the debt has been referred to a collection service.

The bill also requires a hospital or ASC to post standard charges for specified services on its website and establish a process for reviewing and responding to grievances from patients. Additionally, the bill amends a provision of current law that requires hospitals and ASCs to provide estimates of anticipated charges for nonemergency services, to require that facilities also must provide such estimates to the patient's health insurer. The health insurer, in turn, is required under the bill to prepare an "advance explanation of benefits" for the patient, within a specified time frame prior to the service being provided, based on the facility's estimate.

The bill may pose an indeterminate negative fiscal impact to the Agency for Health Care Administration. *See* Section V of this analysis.

The bill takes effect on July 1, 2023.

II. Present Situation:

Florida Price Transparency: Florida Patient's Bill of Rights and Responsibilities

In 1991, the Legislature enacted the Florida Patient's Bill of Rights and Responsibilities (Patient's Bill of Rights).¹ The statute established the right of patients to expect medical

¹ Section 1, Ch. 91-127, Laws of Fla. (1991); s. 381.026, F.S.

providers to observe standards of care in providing medical treatment and communicating with their patients.² The standards of care include, but are not limited to, the following aspects of medical treatment and patient communication:

- Individual dignity;
- Provision of information;
- Financial information and the disclosure of financial information;
- Access to health care;
- Experimental research; and
- Patient's knowledge of rights and responsibilities.

A patient has the right to request certain financial information from health care providers and facilities.³ Specifically, upon request, a health care provider or health care facility must provide a person with a reasonable estimate of the cost of medical treatment prior to the provision of treatment.⁴ Estimates must be written in language "comprehensible to an ordinary layperson."⁵ The reasonable estimate does not preclude the health care provider or health care facility from exceeding the estimate or making additional charges as the patient's needs or medical condition warrant.⁶ A patient has the right to receive a copy of an itemized bill upon request and to receive an explanation of charges upon request.⁷

Currently, under the financial information and disclosure provisions in the Patient's Bill of Rights:

- A request is necessary before a health care provider or health care facility must disclose to a Medicare-eligible patient whether the provider or facility accepts Medicare payment as full payment for medical services and treatment rendered in the provider's office or health care facility.
- A request is necessary before a health care provider or health care facility is required to furnish a person an estimate of charges for medical services before providing the services. The Florida Patient's Bill of Rights and Responsibilities does not require that the components making up the estimate be itemized or that the estimate be presented in a manner that is easily understood by an ordinary layperson.
- A licensed facility must place a notice in its reception area that financial information related to that facility is available on the website of the Agency for Health Care Administration (AHCA).
- The facility may indicate that the pricing information is based on a compilation of charges for the average patient and that an individual patient's charges may vary.
- A patient has the right to receive an itemized bill upon request.

Health care providers and health care facilities are required to make available to patients a summary of their rights. The applicable regulatory board or the AHCA may impose an

² Section 381.026(3), F.S.

³ Section 381.026(4)(c), F.S.

⁴ Section 381.026(4)(c)3., F.S.

⁵ *Id.*

⁶ *Id.*

⁷ Section 381.026(4)(c)5., F.S.

administrative fine when a provider or facility fails to make available to patients a summary of their rights.⁸

The Patient's Bill of Rights also authorizes, but does not require, primary care providers⁹ to publish a schedule of charges for the medical services offered to patients.¹⁰ The schedule must include certain price information for at least the 50 services most frequently provided by the primary care provider.¹¹ The law also requires the posting of the schedule in a conspicuous place in the reception area of the provider's office and at least 15 square feet in size.¹² A primary care provider who publishes and maintains a schedule of charges is exempt from licensure fees for a single renewal of a professional license and from the continuing education requirements for a single two-year period.¹³

The law also requires urgent care centers to publish a schedule of charges for the medical services offered to patients.¹⁴ This applies to any entity that holds itself out to the general public, in any manner, as a facility or clinic where immediate, but not emergent, care is provided, expressly including offsite facilities of hospitals or hospital-physician joint ventures, and licensed health care clinics that operate in three or more locations. The schedule requirements for urgent care centers are the same as those established for primary care providers.¹⁵ The schedule must describe each medical service in language comprehensible to a layperson. This provision prevents a center from using medical or billing codes, Latin phrases, or technical medical jargon as the only description of each medical service. An urgent care center that fails to publish and post the schedule of charges is subject to a fine of not more than \$1,000 per day, until the schedule is published and posted.¹⁶

Florida Price Transparency: Health Care Facilities

Under s. 395.301, F.S., a health care facility¹⁷ must provide, within seven days of a written request, a good faith estimate of reasonably anticipated charges for the facility to treat the patient's condition. Upon request, the facility must also provide revisions to the estimate. The estimate may represent the average charges for that diagnosis related group¹⁸ or the average charges for that procedure. The facility is required to place a notice in the reception area that this information is available. A facility that fails to provide the estimate as required may be fined \$500 for each instance of the facility's failure to provide the requested information.

⁸ Section 381.0261, F.S.

⁹ Section 381.026(2)(d), F.S., defines primary care providers to include allopathic physicians, osteopathic physicians, and nurses who provide medical services that are commonly provided without referral from another health care provider, including family and general practice, general pediatrics, and general internal medicine.

¹⁰ Section 381.026(4)(c)3., F.S.

¹¹ *Id.*

¹² *Id.*

¹³ Section 381.026(4)(c)4., F.S.

¹⁴ Section 395.107(1), F.S.

¹⁵ Section 395.107(2), F.S.

¹⁶ Section 395.107(6), F.S.

¹⁷ The term "health care facilities" refers to hospitals and ambulatory surgical centers, which are licensed under part I of Chapter 395, F.S.

¹⁸ Diagnosis related groups (DRGs) are a patient classification scheme which provides a means of relating the type of patients a hospital treats (i.e., its case mix) to the costs incurred by the hospital. DRGs allow facilities to categorize patients based on severity of illness, prognosis, treatment difficulty, need for intervention and resource intensity.

Also, pursuant to s. 395.301, F.S., a licensed facility must notify each patient during admission and at discharge of his or her right to receive an itemized bill upon request. If requested, within seven days of discharge or release, the licensed facility must provide an itemized statement, in language comprehensible to an ordinary layperson, detailing the specific nature of charges or expenses incurred by the patient. This initial bill must contain a statement of specific services received and expenses incurred for the items of service, enumerating in detail the constituent components of the services received within each department of the licensed facility and including unit price data on rates charged by the licensed facility. The patient or patient's representative may elect to receive this level of detail in subsequent billings for services.

Current law also directs these health care facilities to publish information on their websites detailing the cost of specific health care services and procedures, as well as information on financial assistance that may be available to prospective patients. The facility must disclose to the consumer that these averages and ranges of payments are estimates, and that actual charges will be based on the services actually provided.¹⁹ Under s. 408.05, F.S., the AHCA contracts with a vendor to collect and publish this cost information to consumers on an internet site.²⁰ Hospitals and other facilities post a link to this site – known as Florida Health Finder – to comply with the price transparency requirements. The cost information is searchable, based on descriptive bundles of commonly performed procedures and services. The information must, at a minimum, provide the estimated average payment received and the estimated range of payment from all non-governmental payers for the bundles available at the facility.²¹

The law also establishes the right of a patient to request a personalized estimate on the costs of care from health care practitioners who provide services in a licensed hospital facility or ambulatory surgical center.²²

Federal Price Transparency Laws and Regulations

Congress and federal regulatory agencies recently took steps to improve the quantity and quality of health care cost information available to patients.

Hospital Facility Transparency

On November 15, 2019, the federal Centers for Medicare & Medicaid Services (CMS) finalized regulations²³ changing payment policies and rates for services furnished to Medicare beneficiaries in hospital outpatient departments. In doing so, the federal CMS also established new requirements for hospitals to publish standard charges for a wide range of health care services offered by such facilities. Specifically, the regulations require hospitals to make public both a machine-readable file of standard charges and a consumer-friendly presentation of prices

¹⁹ Section 395.301, F.S.

²⁰ Section 408.05(3)(c), F.S.

²¹ *Id.*

²² Section 456.0575(2), F.S.

²³ Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals to Make Standard Charges Public, 84 FR 65524 (November 27, 2019) (codified at 45 CFR Part 180).

for at least 300 “shoppable” health care services. The regulations became effective on January 1, 2021.²⁴

The regulations define a “shoppable” service as one that can be scheduled in advance, effectively giving patients the opportunity to select the venue in which to receive the service. This is a more expansive designation of shoppable services than currently exists in Florida law. For each shoppable service, a hospital must disclose several pricing benchmarks to include:

- The gross charge;
- The payer-specific negotiated charge;
- A de-identified minimum negotiated charge;
- A de-identified maximum negotiated charge; and,
- The discounted cash price.

This information should provide a patient with both a reasonable estimate of the charge for a shoppable service, and also a range in which the actual charge can be expected to fall.

The penalty for facility noncompliance under the federal regulations is a maximum fine of \$300 per day.²⁵

Health Insurer Transparency

On October 29, 2020, the federal departments of Health and Human Services, Labor, and Treasury finalized regulations²⁶ imposing new transparency requirements on issuers of individual and group health insurance plans.

Estimates

Central to the new regulations is a requirement for health plans to provide an estimate of an insured's cost-sharing liability for covered items or services furnished by a particular provider. Under the final rule, health insurance plans must disclose cost-sharing estimates at the request of an enrollee and publicly release negotiated rates for in-network providers, historical out-of-network allowed amounts and billed charges, and drug pricing information. The rule's goal is to enable insured patients to estimate their out-of-pocket costs *before* receiving health care services, to encourage shopping and price competition among providers.²⁷

Each health plan will be required to establish an online shopping tool that will allow insureds to see the negotiated rate between their provider and their plan, as well as a personalized estimate of their out-of-pocket cost for 500 of the most shoppable items and services. Under the federal regulations, this requirement took effect January 1, 2023. Beginning in 2024, health plans will

²⁴ *Id.*

²⁵ Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals to Make Standard Charges Public, 84 FR 65524 (November 27, 2019) (codified at 45 CFR Part 180).

²⁶ Transparency in Coverage, 85 FR 73158 (November 12, 2020)(codified at 29 CFR Part 54, 29 CFR Part 2590, 45 CFR Part 147, and 45 CFR Part 158).

²⁷ Health Affairs Blog, *Trump Administration Finalizes Transparency Rule for Health Insurers, November 1, 2020*, available at <https://www.healthaffairs.org/doi/10.1377/hblog20201101.662872/full/> (last visited Mar. 31, 2023).

need to provide personalized cost-sharing information to patients across the full range of covered health care services.²⁸

Medical Loss Ratio

The regulations also clarify the treatment of shared savings expenses under medical loss ratio (MLR) calculations required by the Patient Protection and Affordable Care Act (ACA). MLR refers to the percentage of insurance premium payments that are actually spent on medical claims by an insurer. In general, MLR requirements are intended to promote efficiency among insurers.²⁹ The ACA established minimum MLR requirements for group and individual health insurance plans.³⁰ Under the ACA, large-group plans must dedicate at least 85 percent of premium payments to medical claims, while small-group and individual market plans must dedicate at least 80 percent of premium payments to medical claims.³¹ Further, the law requires a health plan that does not meet these standards to provide annual rebates to individuals enrolled in the plan.³²

The regulations finalized in October 2020 specify that expenses by a health plan in direct support of a shared savings program shall be counted as medical expenditures.³³ Thus, a health plan providing shared savings to members will receive an equivalent credit towards meeting the MLR standards established by the ACA. In theory, this policy should provide an additional incentive for insurers to adopt shared savings programs if they have not already done so.

The Federal “No Surprises” Act

On December 27, 2020, Congress enacted the No Surprises Act as part of the Consolidated Appropriations Act of 2021.³⁴ The No Surprises Act includes a wide-range of provisions aimed at protecting patients from surprise billing practices and ensuring that patients have access to accurate information about the costs of care. Most sections of the Act go into effect on January 1, 2022, and the federal departments of Health and Human Services, Treasury, and Labor are tasked with issuing regulations and guidance to implement a number of the provisions.³⁵

Estimates – Facilities

In the spirit of price transparency, the No Surprises Act establishes the concept of an “advanced explanation of benefits” (AEOB) that combines information on charges provided by a hospital

²⁸ Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals to Make Standard Charges Public, 84 FR 65524 (November 27, 2019) (codified at 45 CFR Part 180).

²⁹ Henry J Kaiser Family Foundation, “*Explaining Health Care Reform: Medical Loss Ratio (MLR)*”, February 29, 2012, available at <https://www.kff.org/health-reform/fact-sheet/explaining-health-care-reform-medical-loss-ratio-mlr/> (last visited Mar. 31, 2023).

³⁰ Patient Protection and Affordable Care Act, s. 1001; 42 U.S.C. 300gg-18.

³¹ Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals to Make Standard Charges Public, 84 FR 65524 (November 27, 2019) (codified at 45 CFR Part 180).

³² *Id.*

³³ 45 CFR Part 158.

³⁴ Public Law 116-260. The No Surprises Act is found in Division BB of the Act.

³⁵ *Id.*

facility with patient-specific cost information supplied by a health insurance plan. The process is triggered when a patient schedules a service at a hospital facility or requests cost information on a specific set of services. A hospital facility must share a “good faith estimate” of the total expected charges for scheduled items or services, including any expected ancillary services, with a health plan (if the patient is insured) or individual (if the patient is uninsured).³⁶

Estimates – Health Plans

Under the No Surprises Act, once the “good faith estimate” has been shared with a patient’s health plan, the plan must then develop the AEOB. This personalized cost estimate must include the following:

- An indication of whether the facility participates in the patient’s health plan network. If the facility is non-participating, information on how the patient can receive services from a participating provider;
- The good-faith estimate prepared by the hospital facility based on billing/diagnostic codes;
- A good-faith estimate of the amount to be covered by the health plan;
- A good-faith estimate of the amount of the patient’s out-of-pocket costs;
- A good-faith estimate of the accrued amounts already met by the patient towards any deductible or out-of-pocket maximum under the patient’s health plan;
- A disclaimer indicating whether the services scheduled are subject to medical management techniques (e.g., medical necessity determinations, prior authorization, step therapy, etc.); and,
- A disclaimer that the information provided is only an estimate of costs and may be subject to change.³⁷

Furthermore, the Act directs the Secretary of Health and Human Services to establish, by January 1, 2022, a “patient-provider dispute resolution process” to resolve any disputes concerning bills received by uninsured individuals that substantially differ from a provider’s good faith estimate provided prior to the service being rendered.³⁸

The new requirements placed on hospitals and health plans by the No Surprises Act are cumulatively intended to provide patients with increased certainty about the total and out-of-pocket costs associated with health care services. In turn, patients may be more equipped to seek out cost-effective care and avoid unforeseen costs that can lead to financial strain.

Many hospitals do not comply with the federal transparency requirement. A 2021 review of more than 3,500 hospitals found that 55 percent of hospitals were not compliant with the rule and had not posted price information for commercial plans or had not posted any prices at all.³⁹ Nearly 84 percent of hospitals failed to post machine-readable files containing standard charges, and roughly 78 percent of hospitals did not provide a consumer-friendly shoppable services display.⁴⁰

³⁶ Public Law 116-260, Division BB, Section 112.

³⁷ Public Law 116-260, Division BB, Section 111.

³⁸ Patient Protection and Affordable Care Act, s. 1001; 42 U.S.C. 300gg-18.

³⁹ John Xuefeng Jiang, et al., *Factors associated with compliance to the hospital price transparency final rule: A national landscape study*, Journal of General Internal Medicine (2021), available at <https://link.springer.com/article/10.1007/s11606-021-07237-y> (last visited Mar. 31, 2023).

⁴⁰ *Id.*

Another review of more than 6,400 hospitals in 2022 indicated widespread non-compliance with the federal transparency rule in that more than 63 percent of hospitals were estimated to be non-compliant.⁴¹ According to that review, only 38 percent of Florida hospitals were in compliance.⁴²

Medical Debt

Medical costs can result in overwhelming debts to patients, and in some cases, bankruptcy. Nationwide, over 100 million people have some form of medical debt.⁴³ A 2007 study suggested that illness and medical bills contributed to 62.1 percent of all personal bankruptcies filed in the U.S. during that year.⁴⁴ A more recent analysis, which considered only the impact of hospital charges, found that four percent of U.S. bankruptcies among non-elderly adults resulted from hospitalizations.⁴⁵ Four in ten U.S. adults have some form of health care debt.⁴⁶ About half of adults – including three in ten who do not currently have health care debt – are vulnerable to falling in the debt, saying they would be unable to pay a \$500 unexpected medical bill without borrowing money.⁴⁷ While about a third of adults with health care debt owe less than \$1,000, even small amounts of debt can have significant financial consequences for some.⁴⁸ Though a third of those with current debt expect to pay it off within a year and about a quarter expect to pay it within one to two years, nearly one in five adults with health care debt think they will never be able to pay it off.⁴⁹

Medical Debt Collection Process

Current law provides a court process for the collection of lawful debts, including medical debts. A creditor may sue a debtor and, if the creditor prevails, the creditor may receive a final judgment awarding monetary damages. If the debtor does not voluntarily pay the judgment, the creditor has several legal means to collect on the debt, including:

- Wage garnishment.
- Garnishment of money in a bank account.
- Directing the sheriff to seize assets, sell them, and give the proceeds to the creditor.

⁴¹ Foundation for Government Accountability, *How America's Hospitals Are Hiding the Cost of Health Care*, pg. 3, August 2022, available at <https://www.TheFGA.org/paper/americas-hospitals-are-hiding-the-cost-of-health-care> (last visited Mar. 31, 2023). Only two hospitals to date have been fined for noncompliance with the transparency rule, both of which are in Georgia's Northside Hospital System.

⁴² *Id.*, pg. 4.

⁴³ Kaiser Health News, *Diagnosis: Debt – 100 Million People in America Are Saddled with Health Care Debt*, June 16, 2022, available at <https://khn.org/news/article/diagnosis-debt-investigation-100-million-americans-hidden-medical-debt/> (last visited Mar. 31, 2023).

⁴⁴ David U. Himmelstein, et al. "Medical Bankruptcy in the United States, 2007: Results of a National Study." *American Journal of Medicine* 2009; 122: 741-6, available at [https://www.amjmed.com/article/S0002-9343\(09\)00404-5/abstract](https://www.amjmed.com/article/S0002-9343(09)00404-5/abstract) (last visited Mar. 31, 2023)

⁴⁵ Carlos Dobkin, et al. "Myth and Measurement: The Case of Medical Bankruptcies." *New England Journal of Medicine* 2018; 378:1076-1078, available at <https://www.nejm.org/doi/full/10.1056/NEJMp1716604> (last visited Apr. 2, 2023).

⁴⁶ Lopes, L., Kearney, A., et al, *Health Care Debt in the U.S.: The Broad Consequences of Medical and Dental Bills*, June 16, 2022 (using results from the Kaiser Family Foundation Health Care Debt Survey), available at <https://www.kff.org/health-costs/report/kff-health-care-debt-survey/> (last visited March 31, 2023).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

In order to protect debtors from being destitute, current law provides that certain property is exempt from being taken by a creditor. The Florida Constitution provides that the debtor's homestead and \$1,000 of personal property is exempt.⁵⁰ Statutory law provides numerous categories of exempt property, and federal statutory law also provides certain exemptions that apply in all of the states.⁵¹

In addition to the protection from creditors contained in the Florida Constitution, chapter 222, F.S., protects other personal property from certain claims of creditors and legal process: garnishment of wages for a head of family;⁵² proceeds from life insurance policies;⁵³ wages or unemployment compensation payments due certain deceased employees;⁵⁴ disability income benefits;⁵⁵ assets in qualified tuition programs; medical savings accounts; Coverdell education savings accounts; hurricane savings accounts;⁵⁶ \$1,000 interest in a motor vehicle; professionally prescribed health aids; certain refunds or credits from financial institutions; and \$4,000 interest in personal property, if the debtor does not claim or receive the benefits of a homestead exemption under the State Constitution.⁵⁷

Bankruptcy is a means by which a person's assets are liquidated in order to pay that person's debts under court supervision. The U.S. Constitution gives Congress the right to uniformly govern bankruptcy law.⁵⁸ Bankruptcy courts are operated by the federal government. A debtor (the bankrupt person) is not required to give up all of his or her assets in bankruptcy. Certain property is deemed "exempt" from the bankruptcy case and may be kept by the debtor without being subject to creditor claims. The Bankruptcy Code provides for exempt property in a bankruptcy case.⁵⁹ In general, a debtor may choose to utilize the exempt property listing in state law or the exempt property of the Bankruptcy Code. However, federal law allows a state to opt-out of the federal law and thereby insist that debtors only utilize state law exemptions.⁶⁰ Florida, like most states, has made the opt-out election to prohibit the use of the federal exemptions and require that debtors may only use state law exemptions.⁶¹

III. Effect of Proposed Changes:

Medical Debt Protections

The bill amends and creates several sections of law in order to establish new protections for consumers who carry medical debt owed to a hospital or ambulatory surgical center (ASC).

⁵⁰ Art. X, s. 4(a), Fla. Const.

⁵¹ For example, the federal Employee Retirement Income Security Act of 1974 (ERISA) provides that most retirement plans are exempt from creditor claims.

⁵² Section 222.11, F.S.

⁵³ Section 222.13, F.S.

⁵⁴ Section 222.15, F.S.

⁵⁵ Section 222.18, F.S.

⁵⁶ Section 222.22, F.S.

⁵⁷ Section 222.25, F.S.

⁵⁸ Art. 1, s. 8, cl. 4, U.S. Const.

⁵⁹ 11 U.S.C. s. 522.

⁶⁰ 11 U.S.C. s. 522(b).

⁶¹ Section 222.20, F.S.

The bill creates s. 222.26, F.S., in order to shield a debtor's interest, up to \$10,000, in a single motor vehicle and, if the debtor does not claim or receive the benefits of a homestead exemption,⁶² up to \$10,000 of personal property. Under the bill, this property is exempt from attachment, garnishment, or other legal process in an action on such debt.

The bill also amends s. 95.11, F.S., to establish that a legal action to collect such medical debt must commence within three years starting at the time the facility refers the debt to a third party for collection.

The bill creates s. 395.3011, F.S., to prohibit certain billing and collection activities related to such medical debt. The bill defines the term "extraordinary collection action" to mean any of the following actions taken by a licensed facility against an individual in relation to obtaining payment of a bill for care covered under the facility's financial assistance policy:

- Selling the individual's debt to another party.
- Reporting adverse information about the individual to consumer credit reporting agencies or credit bureaus.
- Deferring, denying, or requiring a payment before providing medically necessary care because of the individual's nonpayment of one or more bills for previously provided care covered under the facility's financial assistance policy.
- Actions that require a legal or judicial process, including, but not limited to:
 - Placing a lien on the individual's property;
 - Foreclosing on the individual's real property;
 - Attaching or seizing the individual's bank account or any other personal property;
 - Commencing a civil action against the individual;
 - Causing the individual's arrest; or
 - Garnishing the individual's wages.

The bill prohibits a hospital or ASC from engaging in an extraordinary collection action:

- Before the facility has made reasonable efforts to determine whether the individual is eligible for assistance under its financial assistance policy for the care provided and, if eligible, before a decision is made by the facility on the patient's application for such financial assistance;
- Before the facility has provided the individual with an itemized statement or bill;
- During an ongoing grievance process as described in s. 395.301(6), F.S., or an ongoing appeal of a claim adjudication;
- Before billing any applicable insurer and allowing the insurer to adjudicate a claim;
- For 30 days after notifying the patient in writing, by certified mail, or by other traceable delivery method, that a collection action will commence absent additional action by the patient; or
- While the individual:
 - Negotiates in good faith the final amount of a bill for services rendered; or
 - Complies with all terms of a payment plan with the facility.

⁶² Under s. 4, Art. X of the State Constitution

The bill amends s. 395.301, F.S., to require each hospital and ASC to establish an internal process for reviewing and responding to grievances from patients. The process must allow a patient to dispute charges that appear on the patient's itemized statement or bill and the facility must prominently post on its website and print on each itemized statement or bill, in bold print, the instructions for initiating, and the direct contact information required to initiate, a grievance. The facility must respond to a patient's grievance within seven business days after the patient formally files the grievance.

Price Transparency Provisions

The bill amends s. 395.301, F.S., to require a hospital or an ASC to post on its website a consumer-friendly list of standard charges for at least 300 shoppable health care services. If the facility posts less than 300 services, it must include each service it provides. The bill defines:

- “Shoppable health care service” to mean a service that can be scheduled by a health care consumer in advance. The term includes, but is not limited to, the services described in s. 627.6387(2)(e), F.S.,⁶³ and any services defined in regulations or guidance issued by the U.S. Department of Health and Human Services.
- “Standard charge” to mean the same as that term is defined in regulations or guidance issued by the U.S. Department of Health and Human Services for purposes of hospital price transparency.

The bill also amends provisions requiring a hospital or ASC to provide a good faith estimate for nonemergency medical services to a patient. The bill requires this estimate to be provided to the patient or prospective patient upon scheduling the medical service, rather than within seven days of receiving the request for the service as under current law, and also requires the facility to provide the estimate to the patient's health insurer⁶⁴ and to the patient at least three business days before the service but no more than one business day after the service is scheduled, or three business days after the service is scheduled if the service is scheduled at least ten days in advance.

The bill removes current-law provisions that require the facility to take action to educate the public that such estimates are available upon request and that specify that the estimate does not preclude the actual charges from exceeding the estimate.

The bill creates s. 627.445, F.S., to require a health insurer to prepare an “advance explanation of benefits” (AEB) after receiving an estimate from a hospital or ASC. The bill defines “health insurer” as a health insurer issuing individual or group coverage or a health maintenance organization issuing coverage through an individual or a group contract. The AEB must be provided to the patient no later than one business day after the insurer receives the estimate or no later than three business days for services scheduled at least ten business days in advance. At a

⁶³ These services include clinical laboratory services, infusion therapy, inpatient and outpatient surgical procedures, obstetrical and gynecological services, inpatient and outpatient nonsurgical diagnostic tests and procedures, physical and occupational therapy services, radiology and imaging services, prescription drugs, services provided through telehealth, and any additional services published by the Agency for Health Care Administration that have the most significant price variation pursuant to s. 408.05(3)(m).

⁶⁴ As defined in s. 627.445(1), F.S.

minimum, the AEB must include detailed coverage and cost-sharing information pursuant to the federal No Surprises Act.

Shared Savings Incentive Programs

The bill amends ss. 627.6387, 627.6648, and 641.31076, F.S. to specify that a health insurer or health maintenance organization must count a shared saving incentive program as a medical expense for rate development and rate filing purposes. This change removes a barrier to such programs and aligns Florida law with federal law.⁶⁵

Conforming Changes

The bill makes several conforming cross-reference changes.

Effective Date

The bill provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article II, Section 3, of the Florida Constitution has been interpreted by Florida courts to prohibit the Legislature from delegating its legislative power to others.⁶⁶ Under this non-delegation principle, Florida courts have held that the Legislature may enact laws that adopt federal statutes or other federal regulations in existence and in effect at the time the Legislature acts; however, if the Legislature incorporates into a Florida statute a *future*

⁶⁵ Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals to Make Standard Charges Public, 84 FR 65524 (November 27, 2019) (codified at 45 CFR Part 180)..

⁶⁶ *Abbott Laboratories v. Mylan Pharmaceuticals, Inc.*, 15 So.3d 642 (Fla. 1d DCA 2009), citing *Gallagher v. Motors Ins. Corp.*, 605 So.2d 62, 71 (Fla. 1992).

federal act or regulation, courts have held that such incorporation constitutes an unconstitutional delegation of legislative power.⁶⁷

However, when a statute incorporates a federal law or regulation by reference, in order to avoid holding the subject statute unconstitutional, Florida courts generally interpret the statute as incorporating only the federal law or regulation in effect on the date of the Legislature's action to enact the Florida law, reasoning that the Legislature is presumed to have intended to enact a valid and constitutional law.⁶⁸

Lines 106-115 of the bill define the terms “shoppable health care service” and “standard charge” with reference to how those terms are defined in “regulations or guidance issued by the United States Department of Health and Human Services.” Considering that the bill does not specify that it is referring to such definitions as they exist at a specific date prior to the enactment of the bill, these references may be considered an unauthorized delegation of legislative powers if interpreted to make reference to future revisions of those definitions in federal law and may be interpreted to maintain the meaning of how those federal definitions stand on the date the bill becomes effective instead of incorporating such future revisions.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 268 may have an indeterminate positive fiscal impact on consumers of health care services at hospitals and ambulatory surgical centers (ASCs) through providing additional price transparency prior to the consumer obtaining a health care service and through protecting the consumer against certain debt collection practices for medical debt.

The bill may have an indeterminate negative fiscal impact on hospitals, ASCs, and health insurers related to meeting the new requirements in the bill and on hospitals and ASCs that may not be able to collect on medical debt that they may have collected prior to the passage of the bill.

C. Government Sector Impact:

The Office of the State Courts Administrator reports that the State Courts System receives \$195 in filing fees for each civil proceeding, and those funds are deposited into the State Courts Revenue Trust Fund (SCRTF). To the extent that the number of such proceedings will be reduced by the bill's prohibition against hospitals and ASCs pursuing “extraordinary collection activities,” combined with the bill's other limitations related to

⁶⁷ *State v. Rodriguez*, 365 So.2d 157, 160 (Fla.1978).

⁶⁸ *Id.*

the collection of medical debt, the bill will negatively impact deposits into the SCRTF. The extent of this impact is indeterminate.⁶⁹

The Agency for Health Care Administration (AHCA) has not provided an estimate of the costs it will incur under the bill's numerous measures that increase the regulation of hospitals and ASCs, both of which are licensed and regulated by the AHCA. By requiring new regulatory and disciplinary actions by the AHCA to enforce the bill's new requirements, the bill may pose an indeterminate negative fiscal impact on the AHCA. The extent of this impact is unknown without an estimate from the AHCA.

VI. Technical Deficiencies:

Lines 121-122 of the bill require a hospital or ambulatory surgical center (ASC) to provide the good faith estimate to a patient “upon scheduling a medical service.” However, lines 126-132 require the facility to provide the estimate to the patient “no later than one business day after the service is scheduled” (or three business days in certain scenarios). As such, it is unclear when a facility is required to provide the estimate to the patient or whether the facility must provide the estimate to the patient twice.

VII. Related Issues:

Line 128 requires the good faith estimate to be provided by the hospital or ambulatory surgical center (ASC) to the health insurer and to the patient “at least 3 business days before a service is to be furnished.” It may be impossible for a facility to meet this deadline if a service is to be furnished less than three days after it is scheduled and may preclude services from being furnished less than three days after they are scheduled.

The federal No Surprises Act requires the issuance of an “advanced” explanation of benefits. Meanwhile, SB 268 requires the issuance of an “advance” explanation of benefits.

Many of the bill's new requirements placed on hospitals, ASCs, and insurers are already required under federal law. For example, the federal Centers for Medicare & Medicaid Services (CMS) reports that, “CMS expects hospitals to comply with these legal requirements and is actively enforcing these rules to ensure people know what a hospital charges for items and services. The public is invited to submit a complaint to CMS if it appears that a hospital has not posted information online.”⁷⁰ It is unclear how much duplicative effort and confusion would be created by dual enforcement of these laws under the enactment of SB 268.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 95.11, 395.301, 627.6387, 627.6648, 641.31076, 475.01, 475.611, 517.191, and 768.28.

⁶⁹ Office of the State Courts Administrator, *2023 Judicial Impact Statement: HB 1413*, Mar. 22, 2023 (on file with the Senate Committee on Health Policy).

⁷⁰ Centers for Medicare & Medicaid Services, *Hospital Price Transparency Frequently Asked Questions (FAQs)*, pg. 21, available at: <https://www.cms.gov/files/document/hospital-price-transparency-frequently-asked-questions.pdf> (last visited Apr. 2, 2023).

This bill creates the following sections of the Florida Statutes: 222.26, 395.3011, and 627.445.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Brodeur

10-00729-23

2023268__

1 A bill to be entitled
 2 An act relating to health care expenses; amending s.
 3 95.11, F.S.; establishing a 3-year statute of
 4 limitations for an action to collect medical debt for
 5 services rendered by a health care provider or
 6 facility; creating s. 222.26, F.S.; providing
 7 additional personal property exemptions from legal
 8 process for medical debts resulting from services
 9 provided in certain licensed facilities; amending s.
 10 395.301, F.S.; requiring a licensed facility to post
 11 on its website a consumer-friendly list of standard
 12 charges for a minimum number of shoppable health care
 13 services; defining the terms "shoppable health care
 14 service" and "standard charge"; requiring a licensed
 15 facility to provide an estimate to a patient or
 16 prospective patient and the patient's health insurer
 17 within specified timeframes; requiring a licensed
 18 facility to establish an internal grievance process
 19 for patients to dispute charges; requiring a facility
 20 to make available information necessary for initiating
 21 a grievance; requiring a facility to respond to a
 22 patient grievance within a specified timeframe;
 23 creating s. 395.3011, F.S.; defining the term
 24 "extraordinary collection action"; prohibiting certain
 25 collection activities by a licensed facility; creating
 26 s. 627.445, F.S.; defining the term "health insurer";
 27 requiring each health insurer to provide an insured
 28 with an advance explanation of benefits after
 29 receiving a patient estimate from a facility for

Page 1 of 13

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-00729-23

2023268__

30 scheduled services; providing requirements for the
 31 advance explanation of benefits; amending ss.
 32 627.6387, 627.6648, and 641.31076, F.S.; providing
 33 that a shared savings incentive offered by a health
 34 insurer or health maintenance organization constitutes
 35 a medical expense for rate development and rate filing
 36 purposes; amending ss. 475.01, 475.611, 517.191, and
 37 768.28, F.S.; conforming cross-references; providing
 38 an effective date.
 39

40 Be It Enacted by the Legislature of the State of Florida:

41
 42 Section 1. Present subsections (4) through (11) of section
 43 95.11, Florida Statutes, are redesignated as subsections (5)
 44 through (12), a new subsection (4) is added to that section, and
 45 paragraph (o) of subsection (3) and paragraphs (f) and (g) of
 46 present subsection (5) of that section are amended, to read:

47 95.11 Limitations other than for the recovery of real
 48 property.—Actions other than for recovery of real property shall
 49 be commenced as follows:

50 (3) WITHIN FOUR YEARS.—

51 (o) An action for assault, battery, false arrest, malicious
 52 prosecution, malicious interference, false imprisonment, or any
 53 other intentional tort, except as provided in subsections (5),
 54 (6), and (8) ~~(4)~~, ~~(5)~~, and ~~(7)~~.

55 (4) WITHIN THREE YEARS.—An action to collect medical debt
 56 for services rendered by a facility licensed under chapter 395,
 57 provided that the period of limitations shall run from the date
 58 on which the facility refers the medical debt to a third party

Page 2 of 13

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-00729-23

2023268__

59 for collection.

60 ~~(6)-(5)~~ WITHIN ONE YEAR.—

61 (f) Except for actions described in subsection (9) ~~(8)~~, a
62 petition for extraordinary writ, other than a petition
63 challenging a criminal conviction, filed by or on behalf of a
64 prisoner as defined in s. 57.085.

65 (g) Except for actions described in subsection (9) ~~(8)~~, an
66 action brought by or on behalf of a prisoner, as defined in s.
67 57.085, relating to the conditions of the prisoner's
68 confinement.

69 Section 2. Section 222.26, Florida Statutes, is created to
70 read:

71 222.26 Additional exemptions from legal process concerning
72 medical debt.—If a debt is owed for medical services provided by
73 a facility licensed under chapter 395, the following property is
74 exempt from attachment, garnishment, or other legal process in
75 an action on such debt:

76 (1) A debtor's interest, not to exceed \$10,000 in value, in
77 a single motor vehicle as defined in s. 320.01(1).

78 (2) A debtor's interest in personal property, not to exceed
79 \$10,000 in value, if the debtor does not claim or receive the
80 benefits of a homestead exemption under s. 4, Art. X of the
81 State Constitution.

82 Section 3. Present paragraphs (b), (c), and (d) of
83 subsection (1) of section 395.301, Florida Statutes, are
84 redesignated as paragraphs (c), (d), and (e), respectively,
85 present subsection (6) of that section is redesignated as
86 subsection (7), a new paragraph (b) is added to subsection (1)
87 of that section, a new subsection (6) is added to that section,

10-00729-23

2023268__

88 and present paragraph (b) of subsection (1) of that section is
89 amended, to read:

90 395.301 Price transparency; itemized patient statement or
91 bill; patient admission status notification.—

92 (1) A facility licensed under this chapter shall provide
93 timely and accurate financial information and quality of service
94 measures to patients and prospective patients of the facility,
95 or to patients' survivors or legal guardians, as appropriate.
96 Such information shall be provided in accordance with this
97 section and rules adopted by the agency pursuant to this chapter
98 and s. 408.05. Licensed facilities operating exclusively as
99 state facilities are exempt from this subsection.

100 (b) Each licensed facility shall post on its website a
101 consumer-friendly list of standard charges for at least 300
102 shoppable health care services. If a facility provides fewer
103 than 300 distinct shoppable health care services, it must make
104 available on its website the standard charges for each service
105 it provides. As used in this paragraph, the term:

106 1. "Shoppable health care service" means a service that can
107 be scheduled by a health care consumer in advance. The term
108 includes, but is not limited to, the services described in s.
109 627.6387(2) (e) and any services defined in regulations or
110 guidance issued by the United States Department of Health and
111 Human Services.

112 2. "Standard charge" has the same meaning as that term is
113 defined in regulations or guidance issued by the United States
114 Department of Health and Human Services for purposes of hospital
115 price transparency.

116 ~~(c)-(b)~~1. ~~Upon request, and~~ Before providing any

10-00729-23 2023268__

117 nonemergency medical services, each licensed facility shall
 118 provide in writing or by electronic means a good faith estimate
 119 of reasonably anticipated charges by the facility for the
 120 treatment of a the patient's or prospective patient's specific
 121 condition. Such estimate must be provided to the patient or
 122 prospective patient upon scheduling a medical service. The
 123 facility ~~must provide the estimate to the patient or prospective~~
 124 ~~patient within 7 business days after the receipt of the request~~
 125 ~~and~~ is not required to adjust the estimate for any potential
 126 insurance coverage. The facility shall provide the estimate to
 127 the patient's health insurer, as defined in s. 627.445(1), and
 128 to the patient at least 3 business days before a service is to
 129 be furnished, but no later than 1 business day after the service
 130 is scheduled or, in the case of a service scheduled at least 10
 131 business days in advance, no later than 3 business days after
 132 the service is scheduled. The estimate may be based on the
 133 descriptive service bundles developed by the agency under s.
 134 408.05(3)(c) unless the patient or prospective patient requests
 135 a more personalized and specific estimate that accounts for the
 136 specific condition and characteristics of the patient or
 137 prospective patient. The facility shall inform the patient or
 138 prospective patient that he or she may contact his or her health
 139 insurer ~~or health maintenance organization~~ for additional
 140 information concerning cost-sharing responsibilities.

141 2. In the estimate, the facility shall provide to the
 142 patient or prospective patient information on the facility's
 143 financial assistance policy, including the application process,
 144 payment plans, and discounts and the facility's charity care
 145 policy and collection procedures.

10-00729-23 2023268__

146 3. The estimate ~~must~~ shall clearly identify any facility
 147 fees and, if applicable, include a statement notifying the
 148 patient or prospective patient that a facility fee is included
 149 in the estimate, the purpose of the fee, and that the patient
 150 may pay less for the procedure or service at another facility or
 151 in another health care setting.

152 4. ~~Upon request,~~ The facility shall notify the patient or
 153 prospective patient of any revision to the estimate.

154 5. In the estimate, the facility must notify the patient or
 155 prospective patient that services may be provided in the health
 156 care facility by the facility as well as by other health care
 157 providers that may separately bill the patient, if applicable.

158 6. ~~The facility shall take action to educate the public~~
 159 ~~that such estimates are available upon request.~~

160 7. Failure to timely provide the estimate pursuant to this
 161 paragraph shall result in a daily fine of \$1,000 until the
 162 estimate is provided to the patient or prospective patient and
 163 the health insurer. The total fine per patient estimate may not
 164 exceed \$10,000.

165 ~~The provision of an estimate does not preclude the actual~~
 166 ~~charges from exceeding the estimate.~~

167 (6) Each facility shall establish an internal process for
 168 reviewing and responding to grievances from patients. Such
 169 process must allow a patient to dispute charges that appear on
 170 the patient's itemized statement or bill. The facility shall
 171 prominently post on its website and indicate in bold print on
 172 each itemized statement or bill the instructions for initiating
 173 a grievance and the direct contact information required to
 174

10-00729-23 2023268

initiate the grievance process. The facility must provide an initial response to a patient grievance within 7 business days after the patient formally files a grievance disputing all or a portion of an itemized statement or bill.

Section 4. Section 395.3011, Florida Statutes, is created to read:

395.3011 Billing and collection activities.-

(1) As used in this section, the term "extraordinary collection action" means any of the following actions taken by a licensed facility against an individual in relation to obtaining payment of a bill for care covered under the facility's financial assistance policy:

(a) Selling the individual's debt to another party.

(b) Reporting adverse information about the individual to consumer credit reporting agencies or credit bureaus.

(c) Deferring, denying, or requiring a payment before providing medically necessary care because of the individual's nonpayment of one or more bills for previously provided care covered under the facility's financial assistance policy.

(d) Actions that require a legal or judicial process, including, but not limited to:

1. Placing a lien on the individual's property;

2. Foreclosing on the individual's real property;

3. Attaching or seizing the individual's bank account or any other personal property;

4. Commencing a civil action against the individual;

5. Causing the individual's arrest; or

6. Garnishing the individual's wages.

(2) A facility may not engage in an extraordinary

10-00729-23 2023268

collection action against an individual to obtain payment for services:

(a) Before the facility has made reasonable efforts to determine whether the individual is eligible for assistance under its financial assistance policy for the care provided and, if eligible, before a decision is made by the facility on the patient's application for such financial assistance;

(b) Before the facility has provided the individual with an itemized statement or bill;

(c) During an ongoing grievance process as described in s. 395.301(6) or an ongoing appeal of a claim adjudication;

(d) Before billing any applicable insurer and allowing the insurer to adjudicate a claim;

(e) For 30 days after notifying the patient in writing, by certified mail, or by other traceable delivery method, that a collection action will commence absent additional action by the patient; or

(f) While the individual:

1. Negotiates in good faith the final amount of a bill for services rendered; or

2. Complies with all terms of a payment plan with the facility.

Section 5. Section 627.445, Florida Statutes, is created to read:

627.445 Advance explanation of benefits.-

(1) As used in this section, the term "health insurer" means a health insurer issuing individual or group coverage or a health maintenance organization issuing coverage through an individual or a group contract.

10-00729-23

2023268__

(2) Each health insurer shall prepare an advance explanation of benefits upon receiving a patient estimate from a facility pursuant to s. 395.301(1). The health insurer must provide the advance explanation of benefits to the insured no later than 1 business day after receiving the patient estimate from the facility or, in the case of a service scheduled at least 10 business days in advance, no later than 3 business days after receiving such estimate.

(3) At a minimum, the advance explanation of benefits must include detailed coverage and cost-sharing information pursuant to the No Surprises Act, Title I of Division BB, Pub. L. No. 116-260.

Section 6. Paragraph (a) of subsection (4) of section 627.6387, Florida Statutes, is amended to read:

627.6387 Shared savings incentive program.—

(4)(a) A shared savings incentive offered by a health insurer in accordance with this section:

1. Is not an administrative expense for rate development or rate filing purposes and must be counted as a medical expense for such purposes.

2. Does not constitute an unfair method of competition or an unfair or deceptive act or practice under s. 626.9541 and is presumed to be appropriate unless credible data clearly demonstrates otherwise.

Section 7. Paragraph (a) of subsection (4) of section 627.6648, Florida Statutes, is amended to read:

627.6648 Shared savings incentive program.—

(4)(a) A shared savings incentive offered by a health insurer in accordance with this section:

Page 9 of 13

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-00729-23

2023268__

1. Is not an administrative expense for rate development or rate filing purposes and must be counted as a medical expense for such purposes.

2. Does not constitute an unfair method of competition or an unfair or deceptive act or practice under s. 626.9541 and is presumed to be appropriate unless credible data clearly demonstrates otherwise.

Section 8. Paragraph (a) of subsection (4) of section 641.31076, Florida Statutes, is amended to read:

641.31076 Shared savings incentive program.—

(4) A shared savings incentive offered by a health maintenance organization in accordance with this section:

(a) Is not an administrative expense for rate development or rate filing purposes and must be counted as a medical expense for such purposes.

Section 9. Paragraphs (a) and (j) of subsection (1) of section 475.01, Florida Statutes, are amended to read:

475.01 Definitions.—

(1) As used in this part:

(a) "Broker" means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or

Page 10 of 13

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-00729-23

2023268__

printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists. A broker renders a professional service and is a professional within the meaning of s. 95.11(5)(a) ~~s. 95.11(4)(a)~~. Where the term "appraise" or "appraising" appears in the definition of the term "broker," it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser, and those appraisal services which may be performed by a registered trainee appraiser as defined in part II. The term "broker" also includes any person who is a general partner, officer, or director of a partnership or corporation which acts as a broker. The term "broker" also includes any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons, except as provided in ss. 475.011 and 721.20.

(j) "Sales associate" means a person who performs any act

Page 11 of 13

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-00729-23

2023268__

specified in the definition of "broker," but who performs such act under the direction, control, or management of another person. A sales associate renders a professional service and is a professional within the meaning of s. 95.11(5)(a) ~~s. 95.11(4)(a)~~.

Section 10. Paragraph (h) of subsection (1) of section 475.611, Florida Statutes, is amended to read:

475.611 Definitions.—

(1) As used in this part, the term:

(h) "Appraiser" means any person who is a registered trainee real estate appraiser, a licensed real estate appraiser, or a certified real estate appraiser. An appraiser renders a professional service and is a professional within the meaning of s. 95.11(5)(a) ~~s. 95.11(4)(a)~~.

Section 11. Subsection (7) of section 517.191, Florida Statutes, is amended to read:

517.191 Injunction to restrain violations; civil penalties; enforcement by Attorney General.—

(7) Notwithstanding s. 95.11(5)(e) ~~s. 95.11(4)(e)~~, an enforcement action brought under this section based on a violation of any provision of this chapter or any rule or order issued under this chapter shall be brought within 6 years after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, but not more than 8 years after the date such violation occurred.

Section 12. Subsection (14) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions;

Page 12 of 13

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-00729-23 2023268__

recovery limits; civil liability for damages caused during a
riot; limitation on attorney fees; statute of limitations;
exclusions; indemnification; risk management programs.—

(14) Every claim against the state or one of its agencies
or subdivisions for damages for a negligent or wrongful act or
omission pursuant to this section shall be forever barred unless
the civil action is commenced by filing a complaint in the court
of appropriate jurisdiction within 4 years after such claim
accrues; except that an action for contribution must be
commenced within the limitations provided in s. 768.31(4), and
an action for damages arising from medical malpractice or
wrongful death must be commenced within the limitations for such
actions in s. 95.11(5) ~~s. 95.11(4)~~.

Section 13. This act shall take effect July 1, 2023.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Committee on Agriculture,
Environment, and General Government, *Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Committee on Health
and Human Services
Children, Families, and Elder Affairs
Community Affairs
Regulated Industries
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JASON BRODEUR

10th District

April 4, 2023

The Honorable Gayle Harrell
Chair, Appropriations on Health and Human Services
400 Senate Building
414 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Harrell,

I respectfully request that **Senate Bill 268, Health Care Expenses**, be placed on the agenda for the Appropriations on Health and Human Services Committee meeting to be considered at your earliest convenience.

If you have any questions or concerns, please do not hesitate to reach out to me or my office.

Sincerely,

A handwritten signature in black ink that reads "Jason Brodeur". The signature is fluid and cursive, with the first name "Jason" being more prominent than the last name "Brodeur".

Senator Jason Brodeur – District 10

CC: Tonya Money– Staff Director
Robin Jackson – Administrative Assistant

REPLY TO:

- 110 Timberlachen Circle, Suite 1012, Lake Mary, Florida 32746 (407) 333-1802
- 405 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5010

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

BILL: CS/CS/SB 272

INTRODUCER: Appropriations Committee on Health and Human Services; Children, Families, and Elder Affairs Committee; and Senator Garcia and others

SUBJECT: Education for Children and Young Adults in Out-of-home Care

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Sneed</u>	<u>Money</u>	<u>AHS</u>	<u>Fav/CS</u>
3.	<u></u>	<u></u>	<u>FP</u>	<u></u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 272 is cited as the Nancy C. Detert Champion for Children Act.” The bill makes several changes to the statutes to enhance support for children and young adults who are currently or have formerly been in out-of-home care. The bill establishes the Office of the Children’s Ombudsman within the Department of Children and Families (DCF) and expands their participation in the Keys to Independence (Keys) program. The bill also requires certain information about their basic rights to be provided to them and requires the DCF to consult with these youth when creating or revising any print or digital information used to educate and inform these youth to ensure the information is understandable and age-appropriate.

The bill amends s. 39.4085, F.S., to establish the Office of the Children’s Ombudsman within the DCF to:

- Receive complaints from children and young adults about placement, care, and services and assist in mediating such concerns.
- Be a resource to identify and explain relevant policies or procedures to children, young adults, and their caregivers.
- Provide recommendations to the DCF to address systemic problems that are leading to complaints from children and young adults.

The bill requires case managers and other child welfare professionals to ensure that youth in out-of-home care receive information about laws and requirements on their rights and related education topics including:

- Normalcy and what that means for a child in out-of-home care;
- Safety;
- Education;
- Participation in court proceedings;
- Participation in permanency planning, transition planning and other case planning;
- Placement, visitation, and contact with siblings, family, and others; and
- Access to food, clothing, shelter, and health care.

The bill requires the DCF to consult with youth who are currently or have formerly been in out-of-home care when creating or revising any print or digital written information and use their feedback to ensure that such information is understandable, appropriate, and useful to them.

The bill amends s. 409.1454, F.S., to expand eligibility for the Keys program. The program is designed to remove barriers for foster and former foster youth to obtain a driver's license. The bill removes the criteria that the youth must have been in licensed care upon his or her 18th birthday. This change will allow approximately 450 additional young adults to be eligible to participate in the Keys program.

The bill has an insignificant negative fiscal impact on state government expenditures.

The bill is effective July 1, 2023.

II. Present Situation:

Department of Children and Families

The mission of the DCF is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.¹

Under s. 20.19(4), F.S., the DCF must provide services relating to:

- Adult protection.
- Child care regulation.
- Child welfare.
- Domestic violence.
- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.

¹ Section 20.19(1), F.S.

The DCF must also deliver services by contract through private providers to the extent allowed by law and funding.² These private providers include community based care lead agencies (CBCs) delivering child welfare services and managing entities (MEs) delivering behavioral health services.

Florida's Child Welfare System

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. Florida's dependency system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. DCF and the 18 CBCs throughout Florida³ work with those families to address the problems endangering children, if possible. If the problems are not addressed, the child welfare system finds safe out-of-home placements for these children.

The DCF's practice model is based on the safety of the child within the home by using in-home services, such as parenting coaching and counseling, to maintain and strengthen that child's natural supports in his or her environment.

The DCF contracts with CBCs for case management, out-of-home services, and related services. The outsourced provision of child welfare services is intended to increase local community ownership of service delivery and design. CBCs contract with a number of subcontractors for case management and direct care services to children and their families.

The DCF remains responsible for a number of child welfare functions, including operating the central abuse hotline, performing child protective investigations, and providing children's legal services.⁴ Ultimately, the DCF is responsible for program oversight and the overall performance of the child welfare system.⁵

Rights of and Goals for Delivery of Services to Children in Foster Care

The U.S. and Florida Constitutions provide rights to individuals, including children in foster care, as do certain federal and state laws. Examples include basic rights and a right to privacy under Article I, §2 and Article I, §23 of the Florida Constitution, the right to high quality education under Article IX of the Florida Constitution, and due process rights under the U.S. Constitution.

When a state takes a child into custody, it accepts responsibility for the child's safety.⁶ Courts have found that foster children have a constitutional right to be free from unnecessary pain and a fundamental right to physical safety.⁷ When a state fails to meet that obligation, it deprives the child of a liberty interest under the Fourteenth Amendment.⁸

² *Id.*

³ These 18 CBCs together serve the state's 20 judicial circuits.

⁴ Ch. 39, F.S.

⁵ *Id.*

⁶ *Ray v. Foltz*, 370 F.3d 1079, 1082 (11th Cir. 2004)(citing *Taylor v. Ledbetter*, 818 F.2d 791-95 (11th Cir. 1987).

⁷ *Id.*

⁸ *Id.*

Section 39.4085, F.S., sets forth goals⁹ for the delivery of services to children in shelter or foster care, including that services should be directed by the principle that the health and safety of children should be of paramount concern and children in shelter or foster care should:

- Receive a copy of these goals and have the goals fully explained to them when they are placed in the custody of the DCF.
- Enjoy individual dignity, liberty, pursuit of happiness, and the protection of their civil and legal rights as a person while in the custody of the state.
- Have their privacy protected, have their personal belongings secure and transported with them, and unless otherwise ordered by the court, have uncensored communication, including receiving and sending unopened communications and having access to a telephone.
- Have personnel providing services who are sufficiently qualified and experienced to assess risk children face prior to removal from their home and to meet the needs of the children once they are in the DCF's custody.
- Remain in the custody of their parents or legal custodians unless and until there has been a determination by a qualified person exercising competent professional judgment that removal is necessary to protect their physical, mental, or emotional health or safety.
- Have a full risk, health, educational, medical, and psychological screening, and, if needed, assessment and testing upon adjudication into foster care; and to have their photograph and fingerprints included in their case management file.
- Be referred to and receive services, including necessary medical, emotional, psychological, psychiatric, and educational evaluations and treatment, as soon as practicable after identification of the need for such services by the screening and assessment process.
- Be placed in a home with no more than one other child, unless part of a sibling group.
- Be placed away from other children known to pose a threat of harm to them, either because of their own risk factors or those of the other child.
- Be placed in a home where the shelter or foster caregiver is aware of and understands the child's history, needs, and risk factors.
- Be the subject of a plan developed by the counselor and the shelter or foster caregiver to deal with identified behaviors that may present a risk to the child or others.
- Be involved and incorporated, where appropriate, in the development of the case plan, to have a case plan that will address their specific needs, and to object to any of the provisions in the case plan.
- Receive meaningful case management and planning that will quickly return the child to the family or move the child on to other forms of permanency.
- Receive regular communication with a case manager, at least once a month, which includes meetings with the child alone and conferring with the caregiver.
- Enjoy regular visitation, at least once a week, with their siblings unless the court orders otherwise.
- Enjoy regular visitation with parents, at least once a month, unless the court orders otherwise.

⁹The provisions of s. 39.4085, F.S., establish goals, not rights. The section does not require the delivery of any particular service or level of service in excess of existing appropriations. A person does not have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. The section does not require the expenditure of funds to meet the goals except funds specifically appropriated for such purpose.

- Receive a free and appropriate education, minimal disruption to their education, and retention in their home school, if appropriate; referral to the child study team; all special educational services, including, where appropriate, the appointment of a parent surrogate; the sharing of all necessary information between the school board and the DCF, including information on attendance and educational progress.
- Be able to raise grievances with the DCF over the care they are receiving from their caregivers, case managers, or other service providers.
- Be heard by the court, if appropriate, at all review hearings.
- Have a guardian ad litem appointed to represent, within reason, their best interests and, where appropriate, an attorney ad litem appointed to represent their legal interests. Their guardian ad litem and attorney ad litem must have immediate and unlimited access to the children they represent.
- Have all their records available for review by their guardian ad litem and attorney ad litem if they deem such review is necessary.
- Organize as a group for purposes of ensuring they receive the services and living conditions to which they are entitled and to provide support for one another while in the DCF's custody.
- Be afforded prompt access to all available state and federal programs.

In accordance with s. 39.4091, F.S., caregivers for children in out-of-home care must use the “reasonable and prudent parent standard”. This means that the caregiver must use sensible parental decision-making that maintains the child’s health, safety, and best interests while at the same time encourages the child’s emotional and developmental growth when determining whether to allow a child in out-of-home care to participate in extracurricular, enrichment, and social activities.¹⁰

Public Law 113-183, Preventing Sex Trafficking and Strengthening Families Act, requires that, as part of case planning beginning at age 14, children in foster care must be given a document describing their rights with respect to safety, exploitation, education, health, visitation, and court participation. They must also be informed of their rights to be provided certain specific documents such as copies of consumer credit reports. Children are to sign an acknowledgement that they received these documents.¹¹

The DCF created a 5-page brochure that outlines these expectations and describes the services of the Children’s Ombudsman.¹²

Education and Information for Children in the Child Welfare System

Section 39.4085, F.S., requires that the design and delivery of child welfare services must be directed by the principle that the health and safety of children, including the freedom from abuse, abandonment, or neglect, is of paramount concern. The DCF is to operate with the understanding that the rights of children in shelter or foster care are critical to their safety, permanency, and

¹⁰ The DCF, *CFOP 170-11*, Ch. 6, Sept. 2020, available at <https://www.myflfamilies.com/resources/policies-procedures/cfop-170-11-placement> (last visited March 30, 2023).

¹¹ The DCF, *2023 Agency Bill Analysis for SB 272* at p. 2, March 1, 2023 (on file with the Senate Appropriations Committee on Health and Human Services) (hereinafter cited as, “The DCF Analysis”).

¹² The DCF, *Youth in Foster Care*, available at <https://www.myflfamilies.com/sites/default/files/2022-12/10-28-Foster-Expectations.pdf> (last visited March 30, 2023).

well-being and to work with all stakeholders to help such children become knowledgeable about their rights.

Case managers or other staff must provide verbal and written instructions to a child entering shelter or foster care in an understandable manner on how to identify and report child abuse, abandonment, or neglect. The case manager or other staff must review this information with a child every six months and upon every placement change until the child leaves shelter or foster care. The case manager must document in court reports and case notes the date the child received the information.

Florida Children's Ombudsman

In September of 2016, the DCF created an Ombudsman position which operates within the Office of Child and Family Wellbeing. The position was designed with the intent to listen and be a voice for children and youth involved in the child welfare system. The Ombudsman receives complaints about placement, care, and services, while assisting in mediating those concerns. The Ombudsman is a resource to identify and explain relevant policies or procedures to children, young adults, and their caregivers. The current Ombudsman responds to 450 cases on average each year. Although the Ombudsman is an important piece of the larger child welfare system, this team currently consists of one Ombudsman who serves mostly as a resource for information to the population they serve. As currently structured, the Ombudsman is not responsible for onsite investigations, reaching complaint resolution, or coordination with Lead Agencies, case workers, or the guardian ad litem.

The DCF currently operates a webpage that explains the Ombudsman's role and displays a toll-free number and email address to be used for children and young adults in out-of-home care who may have questions, concerns, or complaints.

Rule 65C-46.003(5)(d), F.A.C., requires all licensed residential group homes (child-caring agencies) to have written and posted grievance procedures which allow children in care or others to make complaints without fear of retaliation. This includes the requirement for group homes to post the phone number of the DCF's Ombudsman (1-844-KIDS-FLA) in areas frequented by children and where they can read it without scrutiny.¹³

Independent Living Services

Florida's Independent Living service array is designed to assist youth and young adults in obtaining skills and support in six federally identified outcome areas¹⁴ as they transition to adulthood. Independent Living programs include:

- Extended Foster Care (EFC) – a program that allows young adults to remain in foster care until the age of 21 while they participate in school, work or work training, and live in a supervised living arrangement;

¹³ The DCF Analysis at p. 3.

¹⁴ The six federally identified outcome areas are increasing financial self-sufficiency, improving educational attainment, increasing connections to caring adults, reducing homelessness, reducing high-risk behavior, and improving access to health insurance.

- Postsecondary Education Services and Support (PESS) – a program that helps pay for housing, and other expenses related to attending an educational institution; and
- Aftercare Services – a temporary needs-based program intended to be a bridge between EFC and PESS programs that may include mentoring, tutoring, mental health and substance abuse services, counseling, and financial assistance.¹⁵

Postsecondary Education Services and Support

Postsecondary Education Services and Support (PESS) is a state-funded Independent Living program that provides a monthly financial award of \$1,720 for housing, utilities, and related expenses to eligible youth who were in the foster care system while working to receive the skills and education necessary to become self-sufficient.¹⁶

PESS Eligibility	
Group 1	Group 2
Not yet 23 years of age but turned 18 years of age while in the custody of the Department of Children and Families (DCF) and spent at least six months in licensed care before turning 18.	Not yet 23 years of age but at least 18 years of age and adopted or placed with a court-approved guardian after his or her 16 th birthday and spent at least six months in licensed care during the 12 months immediately preceding such placement or adoption.
OR	
AND	
Earned a standard high school diploma or equivalent	
AND	
Enrolled in at least nine credit hours and attending a Florida Bright Futures eligible college or vocational school.	

Keys to Independence Program

Children in the foster care system often face barriers to participating in everyday life experiences common to other young people their age. These normal life experiences are an integral part of how all children learn and prepare for the responsibilities they will assume as adults. With the support of their families, millions of teens learn to drive and earn driver licenses every year. A study by the National Highway Traffic Safety Administration found that there are approximately 12 million young drivers on America's roadways.¹⁷ However, for a teen in foster care, for whom securing a driver license can be critically important to his or her success, achieving this milestone can be more complicated. Teens with access to a car are reported to perform better in

¹⁵ See generally The DCF, Office of Child and Family Well-Being, Legislatively Mandated Reports, *Independent Living Services Annual Report FY 2020-21*, January 31, 2022, available at https://www.myflfamilies.com/service-programs/child-welfare/lmr/docs/2022LMRs/Independent_Living_Services_Report_2021.pdf (last visited February 10, 2023).

¹⁶ Section 409.1451(2), F.S.

¹⁷ US Department of Transportation, NHTSA, *Traffic Safety Facts 2020 Data*, p. 2, June 2022, available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813313> (last visited February 10, 2023).

school, obtain better jobs, have more college options, and eventually, more successful careers.¹⁸ Without a driver license, a teen has difficulty traveling, securing an apartment, and achieving gainful employment.¹⁹ Florida law supports the efforts of teens in foster care to engage in age-appropriate activities²⁰ and requires the DCF, or its contracted vendors, to provide “independent life skills and normalcy supports” for children 13 through 17 years of age.²¹

The Keys to Independence (Keys) program is a state-funded support program designed to remove barriers to obtaining a driver license for foster and former foster youth.²²

The program removes barriers to driving by paying, subject to available funding, the cost of driver education, licensure, other costs incidental to licensure, and motor vehicle insurance for certain populations.²³ The DCF contracts with the community-based care lead agency in the 9th and 18th Circuits, Embrace Families, to operate the Keys program statewide.²⁴

In 2021, the Legislature expanded the Keys program to include children who are receiving Postsecondary Education Services and Support under s. 409.1451(2), F.S., and who were also in licensed care when reaching 18 years of age.²⁵

Since December 2017, the Keys program has had over 8,213 enrolled and helped young adults obtain 2,231 learner permits and 1,199 driver licenses.²⁶ The Keys program has stated that the additional requirement that the young adult have been in licensed care when turning 18 years of age is preventing approximately 450 otherwise eligible young adults from entering the program.²⁷

Nancy C. Detert

Nancy C. Detert was a longtime public servant in both local and statewide government. She served in the Florida House of Representatives from 1998 to 2006 and the Florida Senate from 2008 to 2016. She was a champion for children and young adults while in the Legislature, sponsoring and passing many bills during her 16-year tenure, many of them in support of children in the child welfare system. Some of the legislation she was instrumental in includes:

¹⁸ Embrace Families, Report to Congress, *Impact Report: Keys to Independence*, May 2022, available at <https://embracefamilies.org/wp-content/uploads/2022/07/KEYS-TO-INDEPENDENCE-Report-to-Congress-FINAL-May-2022.pdf> (last visited February 10, 2023). The Annie E. Casey Foundation’s Jim Casey Initiative Youth Opportunities Initiative funded Child Trends, a non-profit research organization with a focus on children and families, to conduct analysis of Embrace Families’ data.

¹⁹ *Id.*

²⁰ Section 409.145(2)(b), F.S.

²¹ Section 409.145(3)(d), F.S.

²² Section 409.1454, F.S.

²³ Section 409.1454(2), F.S.

²⁴ Keys to Independence, *About*, available at <https://keystoindependencefl.com/about/> (last visited February 7, 2023).

²⁵ Chapter 2021-169, L.O.F. In 2022, the Legislature again expanded the Keys program to include certain certified unaccompanied homeless youth under s. 743.067, F.S. Chapter 2022-65, L.O.F.

²⁶ Keys to Independence Program Monthly Report, *All Youth Life of Program Tab*, December 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).

²⁷ Embrace Families, Electronic mail from Gerry Glynn, Chief Legal Officer, *Re: Keys to Independence Glitch Bill*, November 29, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).

- In 2002, Representative Detert sponsored the bill that would eventually become the “Road to Independence” program that provides assistance and scholarships to youth and young adults in the child welfare system and helps prepare them for transition to adulthood.²⁸
- In 2005, she filed the first bill that would create a pilot program for foster youth to obtain driver licenses.²⁹ In 2014, this idea would eventually become the Keys to Independence Program, codified as s. 409.1454, F.S.³⁰
- In 2013, Senate President Don Gaetz honored Senator Detert by naming her bill, SB 1036, as the “Nancy C. Detert Common Sense and Compassion Independent Living Act.”³¹ This bill created the extended foster care (EFC) program in Florida allowing young adults to remain with supportive foster families and receive other supports and services until they reach the age of 21. EFC provides the care and compassion that many foster youth need beyond their 18th birthday.³²

Nancy C. Detert passed away on April 5, 2023.³³

III. Effect of Proposed Changes:

The bill is cited as the “Nancy C. Detert Champion for Children Act.”

The bill requires case managers and child welfare professionals to provide certain information to children in the child welfare system and also establishes an Office of the Children’s Ombudsman within the DCF.

Specifically, the bill amends s. 39.4085, F.S., to require case managers or other staff to provide information to children in the child welfare system related to:

- Normalcy and what that means for a child in out-of-home care;
- Education;
- Participation in court proceedings;
- Participation in permanency planning, transition planning and other case planning;
- Placement, visitation, and contact with siblings, family, and other individuals important to the child; and
- Access to food, clothing, shelter, and health care.³⁴

The section is further amended to remove the requirement that instructions provided to children in out-of-home care be “verbal and written”, and requires that the instructions provided must be accompanied with information as well. The bill allows the requirement that case managers or other staff offer children the opportunity to ask questions to remain, but removes the specific

²⁸ Chapter 2002-19, L.O.F.; codified as 409.1451, F.S.

²⁹ HB 143 (2005)

³⁰ Chapter 2014-166, L.O.F.; codified as 409.1454, F.S.

³¹ Tampa Bay Times, *Senator Means What She Says, and Gets Results*, May 24, 2013, available at <https://www.tampabay.com/news/politics/stateroundup/senator-means-what-she-says-and-gets-results/2122673/> (last visited April 17, 2023).

³² SB 1036 (2013); Chapter 2013-178, L.O.F.

³³ The Sarasota Herald-Tribune, *Nancy Detert Obituary*, April 17, 2023, available at <https://www.heraldtribune.com/obituaries/psar0470439> (last visited April 17, 2023).

³⁴ The DCF Analysis at p. 4.

language referencing questions about their “rights and how to identify and report abuse, abandonment, and neglect.” The bill requires case managers to document, in court reports and case notes, the date that instructions were provided to the child.³⁵

The bill establishes the Office of the Children’s Ombudsman within the DCF. To the extent permitted by available resources, the office will:

- Receive complaints from children and young adults about placement, care, and services and assist in mediating such concerns.
- Be a resource to identify and explain relevant policies or procedure to children, young adults, and their caregivers.
- Provide recommendations to the DCF to address systemic problems that are leading to complaints from children and young adults.

The bill requires the DCF to consult with children and young adults who are currently or have formerly been in out-of-home care when creating or revising any print or digital written information and use their feedback to ensure that information is understandable by and useful for the children and young adults.

The bill also expands the Keys program by removing language in statute that restricted one of the eligibility paths. Currently, youth and young adults who achieve eligibility for the Keys program via enrollment in PESS must also have been in licensed care when he or she reached 18 years of age. The bill removes the requirement for young adults who are eligible for enrollment in PESS to have also been in licensed care when he or she reached 18 years of age. This change will include the group of young adults in the “PESS Eligibility” chart (above) identified as “Group 2,” and expand eligibility for the Keys program by approximately 450 additional young adults.³⁶

The number of young adults that will enroll in the Keys program out of the newly eligible 450 is unknown. However, lead agency enrollment of eligible young adults in the Keys program range from 99 percent (Heartland for Children) to 43 percent (Citrus Family Care Network) for an average of 68 percent of eligible young adults.³⁷ Applying this average percent to the newly eligible youth results in an estimated increase of 300 young adults in the Keys program.

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Department of Children and Families, *Keys to Independence Annual Report*, p. 2-3, July 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DCF has contracted with Embrace Families, a community-based care lead agency, to administer the program since the 2017-2018 fiscal year. The contract was expanded statewide in the 2018-2019 fiscal year.³⁸ As specific populations of young adults have been added to the Keys program, additional funding was appropriated to the DCF. The contract amount for the 2022-2023 fiscal year is \$1,688,318. As the chart below indicates, the DCF appears to have sufficient funding to increase the contract with Embrace Families to serve additional program participants identified in this bill.³⁹ Embrace Families has also reported that the projected cost of expansion can likely be covered within the available DCF program funding.⁴⁰

Fiscal Year	DCF Funding for Keys Program	Keys Program Contract Amount
2018-2019	\$800,000	\$800,000
2019-2020	\$800,000	\$800,000
2020-2021	\$800,000	\$800,000
2021-2022	\$2,483,938	\$1,017,688
2022-2023	\$2,483,938	\$1,688,318

³⁸ The DCF, *Embrace Families Contract #LJ973, Amendment #0007*, available at <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=600000&ContractId=LJ973> (last visited February 8, 2023).

³⁹ The DCF, Electronic mail from Chad Barrett, *RE: Keys to Independence Program (K2i)*, February 8, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁴⁰ Embrace Families, Electronic mail from Gerry Glynn, Chief Legal Officer, *Re: Keys to Independence Glitch Bill*, November 29, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.4085 and 409.1454.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations Committee on Health and Human Services on April 18, 2023:

The committee substitute:

- Titles the bill the “Nancy C. Detert Champion of Children Act.”
- Expands the Keys program eligibility criteria to allow certain youth in PESS to participate regardless of whether the youth was in licensed care when he or she 18 years old.

CS by Children, Families, and Elder Affairs on April 4, 2023:

The committee substitute:

- Places the requirement for specific information to be provided to children in the child welfare system in an existing section of law that is already related to the education of dependent youth.
- Establishes the Office of the Children’s Ombudsman and details the responsibilities of that office.
- Requires the DCF to consult with children and young adults in the creation of print and digital materials used to educate and inform children.
- Removes the requirement for an annual report.

- B. **Amendments:**

None.



633058

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2023	.	
	.	
	.	
	.	

The Appropriations Committee on Health and Human Services
(Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete lines 18 - 29

and insert:

Section 1. Subsection (4) of section 409.1454, Florida
Statutes, is amended to read:

409.1454 Motor vehicle insurance and driver licenses for
children in care and certified unaccompanied homeless youth.—

(4) Payment must be made to eligible recipients in the
order of eligibility until available funds are exhausted. If a



633058

child determined to be eligible reaches permanency status or turns 18 years of age, the program may pay for that child to complete a driver education program and obtain a driver license for up to 6 months after the date the child reaches permanency status or 6 months after the date the child turns 18 years of age. A child may be eligible to have the costs of and incidental to licensure paid if he or she demonstrates that such costs are creating barriers to obtaining employment or completing educational goals, if the child meets any of the following criteria:

(a) Is continuing in care under s. 39.6251;

(b) ~~Was in licensed care when the child reached 18 years of age and~~ Is currently receiving postsecondary education services and support under s. 409.1451(2); or

(c) Is an unaccompanied homeless youth certified under s. 743.067 who is a citizen of the United States or legal resident of this state and is:

1. Completing secondary education;

2. Employed at least part time;

3. Attending any postsecondary education program at least part time; or

4. Has a disability that precludes full-time work or education.

Section 2. Paragraph (a) of subsection (3) of section 39.4085, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

39.4085 Goals for dependent children; responsibilities; education; Office of the Children's Ombudsman.—

(3) (a) The case manager or other staff shall, at a minimum,



633058

provide verbal and written:

1. Instructions to a child entering shelter or foster care to educate the child on identifying and reporting abuse, abandonment, or neglect.

2. Information to a child about laws and requirements relating to the topics of nurturing care, personal safety, and protection from abuse, abandonment, and neglect; normalcy and what that means for a

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 2 - 3

and insert:

An act relating to children and young adults in out-of-home care; amending s. 409.1454, F.S.; revising eligibility criteria to participate in a specified program covering certain costs for a driver license and motor vehicle insurance; amending s. 39.4085, F.S.;



415676

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2023	.	
	.	
	.	
	.	

The Appropriations Committee on Health and Human Services
(Harrell and Garcia) recommended the following:

**Senate Amendment to Amendment (633058) (with title
amendment)**

Between lines 4 and 5
insert:

Section 1. This act may be cited as the "Nancy C. Detert
Champion for Children Act."

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 53



415676

11 and insert:
12 of-home care; providing a short title; amending s.
13 409.1454, F.S.; revising

By the Committee on Children, Families, and Elder Affairs; and
Senators Garcia, Osgood, Perry, and Book

586-03513-23

2023272c1

A bill to be entitled

An act relating to education for children and young adults in out-of-home care; amending s. 39.4085, F.S.; requiring a case manager or other staff to provide a child with verbal and written information about certain topics; deleting limitations on the type of questions a child may ask; establishing the Office of the Children's Ombudsman within the Department of Children and Families; specifying responsibilities of the office; requiring the department to consult with specified children and young adults when creating or revising certain print or digital written information; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section 39.4085, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

39.4085 Goals for dependent children; responsibilities; education; Office of the Children's Ombudsman.—

(3) (a) The case manager or other staff shall, at a minimum, provide verbal and written:

1. Instructions to a child entering shelter or foster care to educate the child on identifying and reporting abuse, abandonment, or neglect.

2. Information to a child about laws and requirements relating to the topic of normalcy and what that means for a

586-03513-23

2023272c1

child in out-of-home care; education; participation in court proceedings; participation in permanency planning, transition planning, and other case planning; placement, visitation, and contact with siblings, family, and other individuals who are important to the child; and access to food, clothing, shelter, and health care.

The ~~verbal and written~~ instructions and information must use words and phrasing that each child can understand and must occur in a manner that is most effective for each child. The written instructions and information are only required if the child is of a sufficient age and understanding to receive such instructions and information. The case manager or other staff shall ~~must~~ give each child the opportunity to ask questions and about his or her rights and how to identify and report abuse, abandonment, or neglect. The case manager or other staff shall document in court reports and case notes the date the instructions and information were ~~was~~ provided to the child. The case manager or other staff shall ~~must~~ review the instructions and information with the child every 6 months and upon every placement change until the child leaves shelter or foster care.

(4) The Office of the Children's Ombudsman is established within the department. To the extent permitted by available resources, the office shall, at a minimum:

(a) Receive complaints from children and young adults about placement, care, and services and assist in mediating such concerns.

(b) Be a resource to identify and explain relevant policies or procedures to children, young adults, and their caregivers.

586-03513-23

2023272c1

59 (c) Provide recommendations to the department to address
60 systemic problems that are leading to complaints from children
61 and young adults.

62 (5) The department shall consult with children and young
63 adults who are currently or have formerly been in out-of-home
64 care when creating or revising any print or digital written
65 information used in implementing this section and shall use any
66 responses or feedback to ensure that such print or digital
67 written information is understandable by and appropriate and
68 useful for the children and young adults of the ages for which
69 such print or digital written information is intended.

70 Section 2. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Gayle Harrell, Chair
Appropriations Committee on Health and Human Services

Subject: Committee Agenda Request

Date: April 4, 2023

I respectfully request that **Senate Bill #272**, relating to Children and Young Adults in Out-of-home Care, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in dark ink, appearing to read "Ileana Garcia", is written over a horizontal line.

Senator Ileana Garcia
Florida Senate, District 36

4/18

The Florida Senate
APPEARANCE RECORD

272 Tab 2

Meeting Date

Bill Number or Topic

HHS APPROPs

Deliver both copies of this form to
Senate professional staff conducting the meeting

u33058

Committee

Amendment Barcode (if applicable)

Name

Taylor Woodruff

Phone

850 443 5994

Address

Email

taylor.woodruff@
embracefamilies
org

Street

City

State

Zip

Speaking:

☐ For

☐ Against

☐ Information

OR

Waive Speaking:

☒ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Embrace Families

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

4/18/2023

Meeting Date

Appropriations Committee on Health and Human Services

Committee

Name **Rebekka Behr**

Phone **850-254-5300**

Address **2208 Berkshire Drive**

Email **rebekka.behr@icloud.com**

Street

Tallahassee, FL 32304

City

State

Zip

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 272

Bill Number or Topic

Amendment Barcode (if applicable)

Reset Form

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☒ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida Youth SHINE

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

Tab 2

Tab 2

4/18/2023

The Florida Senate
APPEARANCE RECORD

SB 272

Meeting Date

Bill Number or Topic

Appropriations Committee on Health and Human Services

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name **Lavarian Ouma**

Phone **850-254-5300**

Address **2208 Berkshire Drive**

Email **Lavarianouma17@gmail.com**

Street

Tallahassee, FL 32304

City

State

Zip

Reset Form

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☒ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida Youth SHINE

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

4/18

The Florida Senate
APPEARANCE RECORD

Tab
2

272

Meeting Date

Bill Number or Topic

HHS Approps.

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

415676

Amendment Barcode (if applicable)

Name

Taylor Woodruff

Phone

850 443 5926

Address

Street

Email

taylor.woodruff@
embracefamilies.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Embrace Families

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

BILL: CS/SB 344

INTRODUCER: Health Policy Committee and Senator Brodeur

SUBJECT: Physician Certifications for the Medical Use of Marijuana

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	Fav/CS
2.	Howard	Money	AHS	Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 344 amends section 381.986, Florida Statutes, to allow a qualified physician to conduct an examination for a renewal of a physician certification for medical marijuana by telehealth if he or she is the qualified physician who performed the initial in-person examination.

The bill also authorizes the Department of Health (department) to suspend a qualified physician's registration in the medical marijuana use registry for up to two years if he or she fails to comply with any of the statutory requirements for medical marijuana or provides, advertises, or markets telehealth services before July 1, 2023.

The bill has no fiscal impact on the department.

The bill takes effect on July 1, 2023.

II. Present Situation:

Medical Marijuana General Background

Amendment 2 and Implementing Statutes

On November 4, 2016, Amendment 2 was approved by the statewide electorate and established Article X, section 29 of the Florida Constitution. This section of the constitution became effective on January 3, 2017, and created several exemptions from criminal and civil liability for:

- Qualifying patients who medically use marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- Medical Marijuana Treatment Centers (MMTCs) and their agents and employees for actions or conduct under the amendment and in compliance with rules promulgated by the department.

Subsequently, the Legislature passed SB 8-A in Special Session A of 2017.¹ The bill revised the Compassionate Medical Cannabis Act of 2014² in s. 381.986, F.S., to implement Article X, section 29 of the State Constitution.

Physician Certifications for Medical Marijuana

Subsection (4) of s. 381.986, F.S., establishes the requirements for a qualified physician³ to issue a physician certification for medical marijuana. A qualified physician may only issue a physician certification if he or she:

- Conducted a physical examination while physically present in the same room as the patient and a full assessment of the medical history of the patient.
- Diagnosed the patient with at least one qualifying medical condition.
- Determined that the medical use of marijuana would likely outweigh the potential health risks for the patient, and such determination must be documented in the patient's medical record. If a patient is younger than 18 years of age, a second physician must concur with this determination, and such concurrence must be documented in the patient's medical record.
- Determined whether the patient is pregnant and documented such determination in the patient's medical record.
- Reviewed the patient's controlled substance prescription history in the prescription drug monitoring program database established pursuant to s. 893.055, F.S.
- Reviews the medical marijuana use registry and confirms that the patient does not have an active physician certification from another qualified physician.
- Registers as the issuer of the physician certification for the named qualified patient on the medical marijuana use registry in an electronic manner determined by the department and maintains such registration as required by the section.
- Obtains the voluntary and informed written consent, on a form prescribed by the department of the patient for medical use of marijuana each time the qualified physician issues a physician certification for the patient.

The subsection also requires the qualified physician to submit specified documentation to the Board of Medicine related to issuing certifications for medical conditions of the same kind or class as the listed conditions and issuing certifications for smoking medical marijuana. A physician may only issue a physician certification for smoking to a minor patient if that patient has a terminal condition and meets other specified criteria.

¹ Chapter 2017-232, Laws of Florida.

² Chapter 2014-157, Laws of Florida.

³ Defined as "a person who holds an active, unrestricted license as an allopathic physician under chapter 458 or as an osteopathic physician under chapter 459 and is in compliance with the physician education requirements" of the section.

A physician may issue a physician certification for up to three 70-day supply limits of marijuana or six 35-day supply limits of marijuana in a form for smoking. The department is required to establish daily dose limits by rule and a physician may request an exemption from the daily dose limits for a specified qualified patient by submitting a request form to the department.

A physician must evaluate an existing qualified patient at least once every 30 weeks before issuing a new physician certification. This evaluation must meet the criteria above for issuing a physician certification, including that the examination be conducted in person, and the physician must:

- Determine whether the patient still meets the criteria for a physician certification;
- Identify and document in the patient's medical record whether the patient has experienced adverse drug interactions with other medications or a reduction in the use of, or dependence on, other types of controlled substances; and
- Submit a report to the department with such findings.

As of March 17, 2023, there are 2,540 qualified physicians in Florida and 800,356 qualified patients.⁴ The average cost for an examination to obtain a physician certification varies from physician to physician. One website indicated that the cost can range from \$350-\$600 per year⁵ while another indicated that the costs average around \$150 per visit.⁶ Yet another site offered initial appointments at \$199, renewal appointments at \$169, and offered a membership plan for \$29 per month plus a \$50 application fee.⁷ In addition to the cost of the physician's examination, a qualified patient is also required to pay a \$75 application fee to the department to obtain his or her medical marijuana use identification card.

Telehealth

Telehealth is a mechanism for delivery of health care services. Health care professionals use telehealth as a platform to provide traditional health care services in a non-traditional manner. These services include, among others, preventative medicine and the treatment of chronic conditions.⁸ Section 456.74, F.S., enacted in 2019, regulates the use of telehealth by Florida and out-of-state health care providers.

Current law broadly defines telehealth as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to:⁹

- Assessment, diagnosis, consultation, treatment, and monitoring of a patient;
- Transfer of medical data;
- Patient and professional health-related education;

⁴ Office of Medical Marijuana Use Weekly Update, March 17, 2023, available at https://knowthefactsmmj.com/wp-content/uploads/ommu_updates/2023/031723-OMMU-Update.pdf, (last visited Mar. 23, 2023).

⁵ See <https://www.mmtcfl.com/florida-medical-marijuana-card-cost/>, (last visited Mar. 23, 2023).

⁶ See <https://www.calmefect.com/how-much-does-it-cost-to-get-a-medical-marijuana-card-in-florida/#:~:text=What%20Do%20Doctors%20in%20Florida,need%20to%20see%20the%20doctor,> (last visited March 23, 2023)/

⁷ See <https://marijuanadoctor.com/pricing>, (last visited March 23, 2023).

⁸ U.S. Department of Health and Human Services, *Report to Congress: E-Health and Telemedicine* (August 12, 2016), available at <https://aspe.hhs.gov/system/files/pdf/206751/TelemedicineE-HealthReport.pdf> (last visited Mar. 23, 2023).

⁹ S. 456.47(1)(a), F.S.

- Public health services; and
- Health administration.

A patient receiving telehealth services may be in any location at the time services are rendered and a telehealth provider may be in any location when providing telehealth services to a patient.

Health care services may be provided via telehealth by a Florida-licensed health care practitioner, a practitioner licensed under a multistate health care licensure compact that Florida is a member,¹⁰ or an out-of-state-health care provider who registers with the department.¹¹

Current law requires telehealth providers to meet the same standard of care required for in-person health care services to patients in this state. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care professional to deliver the services.¹²

III. Effect of Proposed Changes:

The bill amends s. 381.986, F.S., to specify that an initial examination for a physician certification for medical marijuana must be conducted in-person with the patient but that for a certification renewal, the examination may be conducted through telehealth as defined in s. 456.47, F.S., provided it is with the qualified physician who performed the initial in-person exam.

The bill also authorizes the department to suspend a qualified physician's registration in the medical marijuana use registry for up to two years if he or she fails to comply with any of the statutory requirements for medical marijuana or provides, advertises, or markets telehealth services before July 1, 2023.

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ Florida is a member of the Nurse Licensure Compact. *See* s. 464.0095, F.S.

¹¹ S. 456.47(4), F.S.

¹² S. 456.47(2), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 344 may have an indeterminate positive fiscal impact on qualified patients who are able to have their physician certification renewal examinations conducted via telehealth and on the qualified physicians who are authorized to conduct such examinations via telehealth.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.986 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy March 27, 2023:

The CS specifies that a renewal exam for medical marijuana conducted by telehealth must be conducted by the same qualified physician who conducted the initial exam. The CS also adds a provision allowing the department to suspend a qualified physician's registration with the medical marijuana use registry for up to two years if he or she violates the provisions of s. 381.986, F.S.; or provides, advertises, or markets telehealth services before July 1, 2023.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Health Policy; and Senator Brodeur

588-03213-23

2023344c1

A bill to be entitled

An act relating to physician certifications for the medical use of marijuana; amending s. 381.986, F.S.; authorizing qualified physicians to perform patient examinations and evaluations through telehealth for renewals of physician certifications for the medical use of marijuana, subject to certain conditions; authorizing the Department of Health to suspend the registration of a qualified physician in the medical marijuana use registry for a specified timeframe for noncompliance with the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (g) of subsection (4) of section 381.986, Florida Statutes, are amended to read:

381.986 Medical use of marijuana.—

(4) PHYSICIAN CERTIFICATION.—

(a) A qualified physician may issue a physician certification only if the qualified physician:

1. Conducted ~~an a physical examination of while physically present in the same room as~~ the patient and a full assessment of the medical history of the patient. For an initial certification, the examination must be a physical examination conducted in person with the patient. For a certification renewal, the examination may be conducted through telehealth as defined in s. 456.47, provided it is with the qualified physician who performed the initial in-person examination.

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03213-23

2023344c1

2. Diagnosed the patient with at least one qualifying medical condition.

3. Determined that the medical use of marijuana would likely outweigh the potential health risks for the patient, and such determination must be documented in the patient's medical record. If a patient is younger than 18 years of age, a second physician must concur with this determination, and such concurrence must be documented in the patient's medical record.

4. Determined whether the patient is pregnant and documented such determination in the patient's medical record. A physician may not issue a physician certification, except for low-THC cannabis, to a patient who is pregnant.

5. Reviewed the patient's controlled drug prescription history in the prescription drug monitoring program database established pursuant to s. 893.055.

6. Reviews the medical marijuana use registry and confirmed that the patient does not have an active physician certification from another qualified physician.

7. Registers as the issuer of the physician certification for the named qualified patient on the medical marijuana use registry in an electronic manner determined by the department, and:

a. Enters into the registry the contents of the physician certification, including the patient's qualifying condition and the dosage not to exceed the daily dose amount determined by the department, the amount and forms of marijuana authorized for the patient, and any types of marijuana delivery devices needed by the patient for the medical use of marijuana.

b. Updates the registry within 7 days after any change is

Page 2 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03213-23

2023344c1

made to the original physician certification to reflect such change.

c. Deactivates the registration of the qualified patient and the patient's caregiver when the physician no longer recommends the medical use of marijuana for the patient.

8. Obtains the voluntary and informed written consent of the patient for medical use of marijuana each time the qualified physician issues a physician certification for the patient, which shall be maintained in the patient's medical record. The patient, or the patient's parent or legal guardian if the patient is a minor, must sign the informed consent acknowledging that the qualified physician has sufficiently explained its content. The qualified physician must use a standardized informed consent form adopted in rule by the Board of Medicine and the Board of Osteopathic Medicine, which must include, at a minimum, information related to:

a. The Federal Government's classification of marijuana as a Schedule I controlled substance.

b. The approval and oversight status of marijuana by the Food and Drug Administration.

c. The current state of research on the efficacy of marijuana to treat the qualifying conditions set forth in this section.

d. The potential for addiction.

e. The potential effect that marijuana may have on a patient's coordination, motor skills, and cognition, including a warning against operating heavy machinery, operating a motor vehicle, or engaging in activities that require a person to be alert or respond quickly.

588-03213-23

2023344c1

f. The potential side effects of marijuana use, including the negative health risks associated with smoking marijuana.

g. The risks, benefits, and drug interactions of marijuana.

h. That the patient's deidentified health information contained in the physician certification and medical marijuana use registry may be used for research purposes.

(g) A qualified physician must evaluate an existing qualified patient at least once every 30 weeks before issuing a new physician certification. The evaluation may be conducted through telehealth as defined in s. 456.47, provided it is with the qualified physician who performed the initial in-person examination of the qualified patient. A physician must:

1. Determine if the patient still meets the requirements to be issued a physician certification under paragraph (a).

2. Identify and document in the qualified patient's medical records whether the qualified patient experienced either of the following related to the medical use of marijuana:

a. An adverse drug interaction with any prescription or nonprescription medication; or

b. A reduction in the use of, or dependence on, other types of controlled substances as defined in s. 893.02.

3. Submit a report with the findings required pursuant to subparagraph 2. to the department. The department shall submit such reports to the Consortium for Medical Marijuana Clinical Outcomes Research established pursuant to s. 1004.4351.

(i) The department shall monitor physician registration in the medical marijuana use registry and the issuance of physician certifications for practices that could facilitate unlawful diversion or misuse of marijuana or a marijuana delivery device

588-03213-23

2023344c1

117 and shall take disciplinary action as appropriate. The
118 department may suspend the registration of a qualified physician
119 in the medical marijuana use registry for a period of up to 2
120 years if the qualified physician:
121 1. Fails to comply with this section; or
122 2. Provides, advertises, or markets telehealth services
123 before July 1, 2023.
124 Section 2. This act shall take effect July 1, 2023.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Committee on Agriculture,
Environment, and General Government, *Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Committee on Health
and Human Services
Children, Families, and Elder Affairs
Community Affairs
Regulated Industries
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JASON BRODEUR

10th District

March 29, 2023

The Honorable Gayle Harrell
Chair, Appropriations on Health and Human Services
414 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Harrell,

I respectfully request that **Senate Bill 344, Physician Certifications For The Medical Use Of Marijuana**, be placed on the agenda of the Appropriations Committee on Health and Human Services meeting to be considered at your earliest convenience.

If you have any questions or concerns, please do not hesitate to reach out to me or my office.

Sincerely,

A handwritten signature in black ink that reads "Jason Brodeur". The signature is fluid and cursive, with the first name "Jason" being more prominent than the last name "Brodeur".

Senator Jason Brodeur – District 10

CC: Tonya Money – Staff Director
Robin Jackson – Administrative Assistant

REPLY TO:

- 110 Timberlachen Circle, Suite 1012, Lake Mary, Florida 32746 (407) 333-1802
- 405 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5010

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

4/18/23

Meeting Date

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

344 Tab 3

Bill Number or Topic

Committee

Disai

Name

Dr. Amy DSAI

Phone

856-857-8445

Address

602 SEABREEZE COURT

Email

ADDS@buntl.com

Street

Tampa

City

FL

State

33602

Zip

Speaking:

☐ For

☒ Against

☐ Information

OR

Waive Speaking:

☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

4/18/2023

Meeting Date

Appropriations Committee on Health and Human Services

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

CS/SB 344

Bill Number or Topic

Amendment Barcode (if applicable)

Name Cathyann Hershfield Phone (239)-789-3353

Address 4419 Del Prado Boulevard S. Email info@getmedicalcannabis.com

Street

Cape Coral

City

FL

State

33904

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1.

This form is part of the public record for this meeting.

S-001 (08/10/2021)

Tab 3

4/18/2023

The Florida Senate
APPEARANCE RECORD

Tab3
CS/SB 344

Meeting Date

Appropriations Committee on Health and Human Services

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name **Barton Hershfield, M.D.**

Phone **(239)-240-2045**

Address **4419 Del Prado Boulevard S.**

Email **hershfield_b@yahoo.com**

Street

Cape Coral

FL

33904

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1.

This form is part of the public record for this meeting.

S-001 (08/10/2021)

Tab 3
CS/SB 344

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Amendment Barcode (if applicable)

Meeting Date

4/18/23

Committee

HHS Approp sub

Name

Ron Watson

Phone

850 567 1202

Address

9114 Seafair Lane

Email

watson.strategies@comcast.net

Street

Tallahassee

State

FL

Zip

32317

Speaking:

☐ For

☐ Against

☐ Information

OR

Waive Speaking:

☒ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:

MUV (move) dispensary



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

April 18

Meeting Date

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

344 T-63

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Dr. Tyson Hoover

Phone

713 565-0477

Address

3650 W. Gandy Blvd #408

Email

doctorhoover@me.com

Street

Tampa

FL

33611

City

State

Zip

Speaking:

☐ For



Against

☐ Information

OR

Waive Speaking:

☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

BILL: CS/SB 366

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Burgess and others

SUBJECT: Dental Services for Indigent Veterans

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Proctor</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Gerbrandt</u>	<u>Money</u>	<u>AHS</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 366 establishes the Veterans Dental Care Grant Program (Program) within the Department of Veterans' Affairs (department). The purpose of the Program is to provide dental care to indigent veterans who reside in underserved and critical need areas of the state.

Eligible veterans are those who have served in the Army, Navy, Air Force, Coast Guard, Marine Corps, Space Force, Florida National Guard, and the United States Reserve Forces. To further qualify, a veteran must have been released from service honorably or later received an upgraded discharge of under honorable conditions. The bill requires the department to contract with a statewide direct-support organization (DSO) to administer the Program. The DSO must have proven experience in establishing and implementing veteran programs, including those that provide dental services.

The department must use the standard for determining indigency provided by the Federal Poverty Income Guidelines produced by the U.S. Department of Health and Human Services.

Funding for the Program is subject to legislative appropriation. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Federal Health Care Benefits for Veterans

Federal health care benefits are generally available to a veteran who served for 24 continuous months in the active military, naval, or air service, or as a current or former member of the Reserves or the National Guard if called to and completed active duty.¹ To qualify, a person must not have been discharged dishonorably. However, an upgraded discharge is recognized.²

Benefits include:

- Inpatient and outpatient care at U.S. Department of Veteran Affairs (VA) medical facilities;
- Prescription drugs from VA providers;
- Long-term care depending on needs, income, and space availability;
- Care from community health care providers when the VA cannot provide care;
- Mental health care; and
- Women's specialty health care.³

Unlike other health care benefits that are generally provided across the board, VA dental benefits are offered in limited circumstances if a veteran:

- Has a service-connected dental disability or condition (10% or greater rating) for which the veteran receives monthly compensation payments;
- Has a service-connected dental non-compensable dental condition or a disability (0% rating) resulting from combat or service trauma;
- Has service-connected disabilities rated 100% (total rating) disabling, or are unemployable and paid at the 100% rate due to service-connected conditions;
- Are a former prisoner of war;
- Has requested dental care within 180 days after discharge or release (under conditions other than dishonorable) from a period of active duty of 90 days or more (one time dental care);
- Has a dental condition clinically determined by the VA to be associated with and aggravating a service-connected medical condition;
- Is actively engaged in a Title 38, USC Chapter 31 Vocational Rehabilitation and Employment Program (limited dental care);
- Is receiving VA care or is scheduled for inpatient care and requires dental care for a condition complicating a medical condition currently under treatment; or
- Is enrolled in a qualifying VA sponsored homeless residential rehabilitation program for at least 60 days (one time dental care).⁴

¹ U.S. Dep't of Veterans Affairs, *Eligibility for VA Health Care*, available at <https://www.va.gov/health-care/eligibility/> (last visited Feb. 14, 2023).

² *Id.*

³ U.S. Gov't Online, *Health Benefits and Issues for Veterans*, available at <https://www.usa.gov/veteran-health#item-35807> (last visited Feb. 14, 2023).

⁴ U.S. Dep't. of Veterans Affairs, *Health Benefits*, available at https://www.va.gov/healthbenefits/resources/publications/IB10-442_dental_benefits_for_veterans.pdf (last visited Mar. 23, 2023).

Direct-Support Organization of the Department

The Florida Legislature authorized the department to establish a direct-support organization (DSO) in 2008.⁵ The DSO for the department is a not-for-profit corporation organized and operated exclusively to obtain funds, such as grants, gifts, and bequests of money.⁶ The DSO provides assistance and support to the department, veterans, and congressionally chartered veteran service organizations with subdivisions in the state.⁷ The DSO operates under a written contract with the department, is governed by a Board of Directors, and is subject to audit.⁸

The DSO for the department is the Florida Veterans Foundation. The foundation partners with state and local governments, veteran service organizations, and educational institutions to improve veterans' physical, financial, mental, emotional, and social well-being.⁹ The foundation is supported by individual and corporate donations, grants, fundraisers, and direct public support.

The foundation partners with the Florida Dental Association and the Florida Mission of Mercy Dental Clinic to provide no-cost dental services to veterans in need.¹⁰

Dental Service Programs

No-cost dental care is provided to veterans in need at two annual Florida events.

Stars, Stripes, & Smiles, a collaborative effort between a Florida congressman's office and a local county dental association, provides no-cost dental services to veterans.¹¹ Services provided through the annual event in West Pasco County are intended to afford veterans relief from dental pain and infection.¹² Services are funded through private donation and professional dentistry and other volunteers.

A second effort in the state to provide no-cost dental services to veterans is the Florida Mission of Mercy Dental Clinic.¹³ Part of an annual 2-day dental clinic, dentistry volunteers provide dental services to persons who are underserved and uninsured. The first day of the event is for veterans only.¹⁴ Services provided through the annual event afford recipients, including veterans, dental exams, cleanings, fillings, extractions, root canals, and limited dentures and partials.¹⁵

⁵ Section 292.055, F.S.; ch. 2008-4, Laws of Fla.

⁶ Section 292.055(2)(b)2., F.S.

⁷ *Id.*

⁸ Section 292.055(3), (4), and (8), F.S.

⁹ Florida Veterans Foundation, *About Florida Veterans Foundation*, available at <https://helpflvets.org/about/> (last visited Mar. 28, 2023).

¹⁰ Florida Veterans Foundation, *Special Veterans Projects*, available at <https://helpflvets.org/special-veteran-projects/> (last visited Mar. 28, 2023).

¹¹ Stars, Stripes, & Smiles, *Home*, available at <https://www.usaveteransmiles.org/> (last visited Feb. 17, 2023). The local association involved is the West Pasco Dental Association and the last event was held Nov. 4, 2022.

¹² Stars, Stripes, & Smiles, *About Us*, available at <https://www.usaveteransmiles.org/> (last visited Feb. 17, 2023).

¹³ By way of example, the 2022 event was held in Tallahassee, FL. Florida Veterans Foundation, *2022 Florida Mission of Mercy*, available at <https://www.floridadental.org/foundation/programs/mission-of-mercy> (last visited Mar. 24, 2023)

¹⁴ *Id.*

¹⁵ *Id.*

United States Federal Poverty Income Guidelines

Federal poverty income guidelines are annually updated.¹⁶ Current guidelines for 2023 provide the following for the 48 contiguous states¹⁷ and the District of Columbia:

Persons in Family/Household	Poverty Guideline
1	\$14,580
2	\$19,720
3	\$24,860
4	\$30,000
5	\$35,140
6	\$40,280 ¹⁸

Various federal programs use the guidelines, or percentage multiples of the guidelines, such as 125 percent or 185 percent of the guidelines, in determining eligibility for certain benefits. These include Head Start, the Supplemental Nutrition Assistance Program, the National School Lunch Program, the Low-Income Home Energy Assistance Program, and the Children's Health Insurance Program.¹⁹

III. Effect of Proposed Changes:

The bill establishes the Veterans Dental Care Grant Program (Program) within the department. The purpose of the Program is to provide dental care to indigent veterans who reside in underserved and critical need areas of the state.

Eligible veterans are those who have served in the Army, Navy, Air Force, Coast Guard, Marine Corps, Space Force, Florida National Guard, and the United States Reserve Forces. To further qualify, a veteran must have been released from service honorably or later received an upgraded discharge of under honorable conditions. The bill requires the Department of Veterans' Affairs (department) to contract with a statewide direct-support organization (DSO) to administer the Program. The DSO must have proven experience in establishing and implementing veteran programs, including those that provide dental services.

The department shall use the standard for determining indigency provided by the Federal Poverty Income Guidelines produced by the U.S. Department of Health and Human Services.

The bill requires the department to adopt rules to administer the Program and to specifically define in rule the terms "indigent veteran" and "underserved and critical need area."

Funding for the Program is subject to legislative appropriation.

¹⁶ U.S. Dep't of Health and Human Services, Office of the Asst. Secretary for Planning and Evaluation, *Poverty Guidelines, HHS Poverty Guidelines for 2023*, available at <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines> (last visited Mar. 28, 2023).

¹⁷ *Id.* Poverty guidelines for Alaska and Hawaii are each separately calculated.

¹⁸ *Id.*

¹⁹ *Id.*

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Free dental care may financially benefit an eligible veteran who currently does not qualify through the U.S. Department of Veteran Affairs , and does not currently take advantage of the two annual no-cost dental care events provided to veterans in need.

In addition, private sector nonprofit dental care providers contracted by the direct-support organization to provide services would benefit from participating in the Veterans Dental Care Grant Program.

C. Government Sector Impact:

The bill has a significant negative fiscal impact on state expenditures due to the bill's provisions that require the Department of Veteran's Affairs to contract with a state-wide direct-support organization to administer the Veterans Dental Care Grant Program. However, the bill is subject to legislative appropriation. According to the department the bill will have an indeterminate negative fiscal impact, which can be absorbed within existing resources, from administrative tasks that may be required to implement the bill.

Tasks involve software development, licensing, IT support, and data storage. Additionally, the bill may have a federal impact resulting from access needs of federal databases.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not address whether an eligible veteran who receives federal dental benefits is precluded from participation in the Veterans Dental Care Grant Program.

VIII. Statutes Affected:

This bill creates section 295.157 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Military and Veterans Affairs, Space, and Domestic Security on
March 29, 2023:**

The committee substitute:

- Provides that dental services through the Veterans Dental Care Grant Program are for indigent veterans in underserved and critical need areas;
- Provides that the department must use the standard for determining indigency provided in the Federal Poverty Income Guidelines produced by the U.S. Department of Health and Human Services; and
- Requires the Department to define by rule “indigent veteran” and an “underserved and critical need area.”

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²⁰ Florida Dep’t of Veterans’ Affairs, *2023 Agency Legislative Bill Analysis on SB 366* (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senators Burgess, Perry, and Gruters

583-03299-23

2023366c1

A bill to be entitled

An act relating to dental services for indigent veterans; creating s. 295.157, F.S.; providing legislative findings and intent; defining terms; establishing the Veterans Dental Care Grant Program within the Department of Veterans' Affairs; specifying the purpose of the program; requiring the department to contract with a direct-support organization to administer the program; requiring the department to use a specified standard for determining indigency; requiring the department to adopt rules; providing that program funding is subject to legislative appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 295.157, Florida Statutes, is created to read:

295.157 Veterans Dental Care Grant Program.—

(1) The Legislature finds that veterans are not afforded dental care after serving in the United States Armed Forces unless they are totally and permanently disabled or have a direct service-connected injury impacting their oral health. The Legislature further finds that this has left many veterans without access to routine dental care for many years and has resulted in severe dental conditions that worsen due to a lack of access to proper dental treatment. It is the intent of the Legislature to create the Veterans Dental Care Grant Program to provide indigent veterans in underserved and critical need areas

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

583-03299-23

2023366c1

the opportunity to access routine dental care after they conclude their service protecting this country's freedom.

(2) As used in this section, the term:

(a) "Department" means the Department of Veterans' Affairs.

(b) "Veteran" has the same meaning as in s. 1.01(14). The term includes all members of the Florida National Guard and United States Reserve Forces who were discharged or released under honorable conditions only, or who later received an upgraded discharge under honorable conditions.

(3) The Veterans Dental Care Grant Program is established within the Department of Veterans' Affairs. The purpose of the program is to provide oral health care to indigent veterans who reside in underserved and critical need areas of this state.

(4) (a) The department shall contract with a statewide direct-support organization to administer the Veterans Dental Care Grant Program. The statewide direct-support organization must have proven experience developing and implementing veteran-relevant programs, including dental service programs. The organization is responsible for distributing grants to eligible nonprofits that have experience in providing dental care to veterans.

(b) The department shall use the standard for determining indigency provided by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services.

(5) The department shall define by rule the terms "indigent veteran" and "underserved and critical need area" and shall adopt rules to administer the program.

(6) Funding for the program is subject to appropriation by

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

583-03299-23

2023366c1

59 the Legislature.

60 Section 2. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Gayle Harrell, Chair
Appropriations Committee on Health and Human Services

Subject: Committee Agenda Request

Date: April 5, 2023

I respectfully request that **Senate Bill #366**, relating to Dental Care for Veterans, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in blue ink, appearing to read "Danny", is written over a horizontal line.

Senator Danny Burgess
Florida Senate, District 23

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Tab 4

4/18/23

Meeting Date

HHS Approps

Committee

SB 366

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Bob Asztalos

Phone

850-284-1166

Address

The Capitol Room 2105

Street

Email

bob.Asztalos@flva.fl.gov

Tallahassee

City

FL

State

32399

Zip

Speaking:

☒ For

☐ Against

☐ Information

OR

Waive Speaking:

☒ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Florida Department of
Veteran Affairs

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

4/18/23

Meeting Date

HHS Appropriations

Committee

Name **Alexandra Abboud (Ah-bood)**

Phone **850-224-1089**

Address **118 E Jefferson Street**

Street

Tallahassee

City

FL

State

32301

Zip

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 366

Bill Number or Topic

Amendment Barcode (if applicable)

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:

Florida Dental Association



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

Tab 4

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

BILL: CS/SB 858

INTRODUCER: Health Policy Committee and Senator Torres and others

SUBJECT: Benefits, Training, and Employment for Veterans and their Spouses

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	Gerbrandt	Money	AHS	Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 858 requires the Florida Department of Veterans' Affairs and Florida is for Veterans (FIFV) to provide spouses of veterans and current members of the Armed Forces with all the services and assistance that these organizations currently provide. The bill also requires FIFV to assist veterans and their spouses in accessing training, education, and employment in health care professions and to coordinate with the Department of Health to assist veterans and their spouses in obtaining health care licensure.

The bill creates the Office of Veterans Licensure Services (the Office) within the Department of Health, to assist active duty members of the U.S. Armed Forces, the U.S. Reserves, the National Guard, veterans, and their spouses with health care practitioner licensure in Florida.

The bill appropriates \$399,565 in trust fund dollars and four positions to the Department of Health to implement the provisions of the bill. See Section V. of this analysis.

The bill takes effect July 1, 2023.

II. Present Situation:

United States Armed Forces

The U.S. Armed Forces is made up of six military branches: Air Force, Army, Coast Guard, Marine Corps, Navy and, most recently, Space Force. The secretary of the U.S. Department of Defense (DoD) has control over the military and each branch, except the Coast Guard, which is under the Department of Homeland Security. With more than two million civilian and military employees, the U.S. DoD is the world's largest employer.¹

U.S. Reserves and National Guard

The Guard and Reserve fill vital roles in the U.S., augmenting the active-duty military services and filling specific needs nationwide. The Guard and Reserve differ from the regular military in that active-duty military members work in the military full time, while regular Guard members and Reservists typically serve on a part-time basis. Both Reservists and Guard members can serve on active-duty orders, known as Active Guard Reserve, or be deployed based on need.

Each branch of the military has a Reserve component whose main purpose is to have trained units available for active duty as needed. Unlike the National Guard, the reserves are always funded by the federal government. The Guard includes the Army National Guard and Air National Guard in each state, U.S. territory and the District of Columbia. Guard units typically are controlled by the state, but they can be activated for federal duty (federalized) and deployed. Both Reserve and Guard units train about one weekend per month plus two weeks a year for “annual training.” Guard and Reserve members must serve a certain number of hours each year to make a “good year” to qualify for benefits and retirement.²

Florida Department of Veterans’ Affairs (FDVA)

The Legislature created the FDVA to assist all former, present, and future members of the U.S. Armed Forces and their dependents in preparing claims for and securing compensation, hospitalization, career training, and other benefits or privileges to which they are, or may become, entitled to under federal or state law by reason of their service in the U.S. Armed Forces. All services rendered under the FDVA must be without charge to the claimant.³

There are 1,492,000 veterans⁴ currently living in Florida, making the state’s veteran population the third largest nationally.⁵

¹ Military.com, *What Are the Branches of the US Military?*, available at <https://www.military.com/join-armed-forces/us-military-branches-overview.html> (last visited Apr. 10, 2023).

² Military.com, *Join the Military, Services Choices, National Guard and Military Reserves Explained*, available at <https://www.military.com/join-armed-forces/guard-reserve-explained.html> (last visited Apr. 10, 2023).

³ Section 292.05(1), F.S.

⁴ Section 1.01(14), F.S., defines veteran as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only, or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the U.S. Department of Veterans Affairs (U.S. DVA) on individuals discharged or released with other than honorable discharges.

⁵ Florida Department of Veterans’ Affairs, *Our Veterans*, available at <http://floridavets.org/our-veterans/> (last visited April 10, 2023).

One of the duties of the FDVA is to conduct an ongoing study on the problems and needs of U.S. Armed Forces resident veterans and the problems and needs of their dependents. The study is required to include:

- A survey of existing state and federal programs available for resident veterans and their dependents that specifies the extent to which such programs presently are being implemented, with recommendations for the improved implementation, extension, or improvement of such programs;
- A survey of the needs of resident veterans and their dependents in the areas of social services, health care, education, and employment, and any other areas of determined need, with recommendations regarding federal, state, and community services that would meet those needs; and
- A survey of federal, state, public, and private moneys available that could be used to defray the costs of state or community services needed for resident veterans and their dependents.

Florida Is For Veterans, Inc. (FIFV)

Section 295.21, F.S., created “Florida Is For Veterans, Inc.,” within the FDVA as a separate nonprofit corporation to help military veterans transition to civilian life or move to Florida through career service initiatives. FIFV’s mission is to promote the value of military skill sets to businesses, assist in training veterans to match marketplace needs, and enhance entrepreneurial skills of veterans.

All agencies of the state are authorized and directed to provide technical assistance to FIFV and identify agency programs to provide assistance or benefits to veterans who are located in or considering relocation to the state. The FDVA may authorize the FIFV to use of FDVA property, facilities, and personnel services, as prescribed by contract.⁶

The purpose of the FIFV is to promote Florida as a veteran-friendly state that seeks to provide veterans with employment opportunities and that promotes the hiring of veterans by the business community. The FIFV must encourage retired and recently separated military personnel to remain in Florida or to make the state their permanent residence. The FIFV must promote the value of military skill sets to businesses in the state, assist in tailoring the training of veterans to match the needs of the employment marketplace, and enhance the entrepreneurial skills of veterans.⁷

Florida Veterans Employment and Training Services Program (VETS)

The Veterans Employment and Training Services Program (VETS) was created within the FDVA, and is administered by FIFV, to assist in linking veterans in search of employment with businesses seeking to hire dedicated, well-trained workers. The purpose of the program is to meet the workforce demands of businesses in the state by facilitating access to training and education in high-demand fields for veterans.

⁶ Section 295.21(1), F.S.

⁷ Section 295.21(2), F.S.

The Department of Economic Opportunity

The Department of Economic Opportunity (DEO) assists the Governor in advancing Florida's economy by championing the state's economic development vision and by administering state and federal programs and initiatives to help visitors, citizens, businesses, and communities.

The DEOs veterans' employment initiatives include, but are not limited to the following services:

- Intensive case management services to veterans with significant barriers to employment including:
 - On-the-job training development;
 - Non-paid work experience;
 - Selective job placement;
 - Counseling;
 - Follow-up services;
 - Job-seeking skills training;
 - Job analysis; and
 - Labor market information.
- Outreach to employers to increase employment opportunities for veterans; and
- Priority enrollment and participation in all U.S. DOL funded employment and training programs, including technology-assisted activities.

Jobs for Veterans' State Grant

The Jobs for Veterans' State Grant program is funded by the U.S. Department of Labor (U.S. DOL) Veterans Employment and Training Service. The DEO administers it in coordination with 24 local workforce development boards to promote and maximize the employment of Florida's veteran population. The Jobs for Veterans' State Grant provides federal funding to support the staffing of the Disabled Veterans' Outreach Program specialists, local veterans' employment representatives, and consolidated positions throughout the DEO's CareerSource Florida Career Center Network.

The Jobs for Veterans' State Grant also supports the DEO's State Veterans' Program Office which is composed of the State Veterans Program coordinator, Regional Veterans Program coordinators, and Intensive Service coordinators. The State Veterans' Program Office seeks to ensure consistency and excellence in program service delivery through the provision of technical assistance, policy, training, and monitoring.

Florida's Jobs for Veterans' State Grant program prepares veterans, transitioning service members, and eligible spouses for meaningful careers through the development of a proactive employment plan and through connection to a career center and community resources to obtain and maintain employment.

The Veteran Readiness and Employment Program is an employment and training program to assist disabled veterans who are being trained/retrained and rehabilitated for new careers by the U.S. DVA. Services include, but are not limited to, on-the-job training development, non-paid

work experience, selective job placement, case management, counseling, follow-up services, provision of job-seeking skills training, job analysis, labor market information.

The Military Family Employment Advocacy Program delivers employment assistance services to active duty military spouses and family members, activated National Guard members, and other military reservists whose units have been activated. Services include interviewing skill training, assessment and testing services, career planning and counseling, job search and placement assistance, labor market information, resume assistance.

The DEO's Employ Florida Vets Portal is a function of the Employ Florida system and is tailored specifically to the needs and interests of veterans. One specific function is to translate military specialty codes, representing military employment classifications, into equivalent civilian job titles.

Florida's Department of Health (DOH)

The Legislature created the DOH to protect and promote the health, safety, and welfare of all residents and visitors in the state.⁸ The DOH is charged with the regulation of health practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the regulatory boards⁹ and professions within the DOH.¹⁰

Health Care Practitioner Regulation

The DOH, Division of MQA, provides health care practitioner regulation and support to health care regulatory boards and councils. Boards are responsible for approving or denying an applicant's license based upon:

- Reviewing applicant qualifications specified in statute;
- Reviewing continuing education courses and practitioners;
- Adopting administrative rules authorized by statute;
- Determining probable cause in cases resulting from complaints; and
- Disciplining practitioners found to be in violation of applicable laws.

The Division of MQA licenses and regulates seven types of health care facilities and more than 200 license types in over 40 professions, while partnering with 22 boards and four councils.¹¹

Health Care Practitioner Scope of Practice

The scope of practice for a regulated health care profession includes activities and procedures that a person with a specified level of education, training, and competency is authorized to perform under laws and rules of the state in which the person practices. Scope of practice can

⁸ Sections 20.43(1) and 456.003, F.S.

⁹ Under s. 456.001(1), F.S., "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the MQA.

¹⁰ Section 20.43(3), F.S.

¹¹ Department of Health, 2022 *Agency Legislative Bill Analysis of CS/SB 466*, pg. 2 (Feb. 3, 2022) (on file with the Senate Committee on Health Policy).

also incorporate conditions that may limit the exercise of authorized activities and procedures.¹² Licensed health care practitioners¹³ in Florida may only perform that which is authorized by the scope of practice for their profession. Individuals who perform functions outside of their scope of practice are subject to discipline. Individuals who perform tasks that are specific to a scope of practice identified in statute without required licensure may be considered to be performing unlicensed activities in violation of law.¹⁴

Currently, any active duty member of the U.S. Armed Forces who, at the time of going on active duty, was in good standing with any health profession regulatory board, or the DOH if there is no board, and is entitled to practice or engage in his or her profession or vocation, must be kept in good standing without registering, paying dues or fees, or performing any other act as long as he or she is on active duty and for a period of six months after discharge from active duty, provided he or she is not engaged in his or her licensed profession or vocation in the private sector for profit.¹⁵

Additionally, current law allows military health care practitioners who are practicing under a military platform, which is a training agreement with a nonmilitary health care provider, to be issued a temporary certificate to practice in this state.¹⁶ Applicants for a temporary certificate must:

- Submit proof that he or she will be practicing pursuant to a military platform;
- Submit a complete application and a nonrefundable application fee, which cannot exceed \$50;
- Hold an active, unencumbered license to practice as a health care professional issued by another state, the District of Columbia, or a possession or territory of the United States or is a military health care practitioner in a profession for which licensure in a state or jurisdiction is not required for practice in the U.S. Armed Forces and provides evidence of military training and experience substantially equivalent to the requirements for licensure in Florida in that profession;

¹² Federation of State Medical Boards, *Assessing Scope of Practice in Health Care Delivery: Critical Questions in Assuring Public Access and Safety* (April 2005) available at <https://www.fsmb.org/siteassets/advocacy/policies/assessing-scope-of-practice-in-health-care-delivery.pdf> The Federation of State Medical Boards is an association whose members include all medical licensing and disciplinary boards in the U.S. and U.S. territories. The Federation acts as a collective voice for 70 member medical boards in promoting high standards for medical licensure and practice. The Guidelines recommend that State regulators and legislators review various factors when considering scope of practice initiatives in the interest of public health and patient safety.

¹³ Section 456.001, F.S., defines a “health care practitioner” to mean any person licensed under chapter 457 (acupuncture); chapter 458 (medical practice); chapter 459 (osteopathic medicine); chapter 460 (chiropractic medicine); chapter 461 (podiatric medicine); chapter 462 (naturopathy); chapter 463 (optometry); chapter 464 (nursing); chapter 465 (pharmacy); chapter 466 (dentistry, dental hygiene, and dental laboratories); chapter 467 (midwifery); part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468 (speech-language pathology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, orthotics, prosthetics, and pedorthics); chapter 478 (electrolysis); chapter 480 (massage therapy); part I, part II, or part III of chapter 483 (clinical laboratory personnel, medical physicists, genetic counseling); chapter 484 (dispensing of optical devices and hearing aids); chapter 486 (physical therapy practice); chapter 490 (psychological services); or chapter 491 (clinical, counseling, and psychotherapy).

¹⁴ Section 456.072, F.S.

¹⁵ Section 456.024, F.S.

¹⁶ Section 456.0241, F.S.

- Attest that he or she is not, at the time of submission of the application, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the U.S. DoD for reasons related to the practice of the profession for which he or she is applying;
- Have been determined to be competent in the profession for which he or she is applying; and
- Submit to background screening if required for the profession for which he or she is applying.

III. Effect of Proposed Changes:

Section 1 makes conforming changes to require the Office of Economic and Demographic Research to perform a program evaluation of the entire Veterans Employment and Training Services Program, rather than specific components of that program.

Section 2 amends s. 292.05, F.S., to expand the duties of the Florida Department of Veterans' Affairs (FDVA) to provide the same benefits and assistance to the spouses of veterans and members of the armed forces which are currently only provided to veterans and members of armed forces.

Sections 3 and 4 amend ss. 295.21 and 295.22, F.S., respectively, to expand the duties of Florida is for Veterans, Inc. (FIFV) to provide the same benefits and assistance to the spouses of veterans that are currently only provided to veterans.

Section 4 amends s. 295.22, F.S., and adds the following new duties for FIFV:

- Assisting veterans and their spouses in accessing training, education, and employment in health care professions; and
- Coordinating with the Office of Veteran Licensure Services within the Department of Health (DOH) to assist veterans and their spouses in obtaining licensure pursuant to s. 456.024, F.S., which pertains to maintaining licensure status while on active duty.

Sections 5 and 6 amend s. 456.013 (13), F.S., respectively, to relocate statutes relating to the waiver of all licensure fees for initial DOH licenses for veterans and their spouses to s. 456.024, F.S. The bill removes the requirement that a military veteran or spouse must apply for the fee waiver within 60 months after being honorably discharged and allows an application to be submitted up to 6 months before discharge.

The bill amends s. 456.024, F.S., to clarify that an active duty U.S. armed forces member, who is a health care practitioner in good standing, will not be required to pay renewal fees or complete continuing education requirements and will be kept in good standing while on active duty and for six months after discharge if he or she is not practicing in the private sector for profit.

Section 7 amends s. 456.0241, F.S., to waive all application and renewal fees related to temporary certificates for active duty military health care practitioners.

Section 8 creates s. 456.0242, F.S., which establishes the office of Veterans Licensure Services (the Office), within the DOH, to assist active duty members of the U.S. Armed Forces, the Reserve, the Guard, veterans, and the spouses of veterans who seek to become a licensed health

care practitioner in this state. The Office must be headed by an executive director, who must be a veteran designated by the DOH.

Under the bill, the Office must:

- Provide information, guidance, direction, and assistance with the licensure process;
- Coordinate with each health profession regulatory board, or the DOH if there is no board, to expedite all applications submitted;
- Refer an individual requesting assistance with resume writing and proofreading, job application completion, and interviewing skills and techniques to FIFV;
- Refer an individual requesting information about educational or employment opportunities in health care professions to FIFV;
- Submit a report by November 11 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must categorize each individual as an active duty member, a veteran, or a veteran's spouse and must include, but is not limited to:
 - The number of individuals served;
 - The educational and training background of each individual seeking licensure;
 - Each health care license an individual holds in another state, irrespective of the current status of the license;
 - The number of licensure applications received;
 - The average number of calendar days required to license a qualified applicant; and
 - The number of referrals made for vocational assistance.

The bill authorizes the DOH to adopt rules necessary to implement the bill.

Section 9 provides an appropriation, which is outlined in Section V. of this analysis.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 858, in part, is designed to address the shortage of health care professionals in this state, but the extent of that potential impact is indeterminate.

C. Government Sector Impact:

According to the Department of Health (DOH), the provisions of bill will require the establishment of the Office of Veteran Licensure Services with a substantial workload that cannot be absorbed within existing resources. As such, the bill appropriates four full-time equivalent positions with an associated salary rate of 223,879 and the sums of \$380,209 in recurring funds and \$19,356 in nonrecurring trust fund dollars to the DOH for the purpose of implementing the bill for Fiscal Year 2023-2024.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The report required under s. 456.0242, F.S., does not include reporting on data relating to Reserve and Guard members who may utilize the services of the Office of Veteran Licensure Services.

VIII. Statutes Affected:

This bill creates section 456.0242 of the Florida Statutes.

The bill substantially amends the following sections of the Florida Statutes: 288.0001, 292.05, 295.21, 295.22, 456.013, 456.024, and 456.0241.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on April 4, 2023:

The CS:

- Changes the title of the bill to, “An Act Relating to Benefits, Training, and Employment for Veterans and their Spouses;”
- Increases the duties of:
 - The FDVA to include veterans spouses;
 - The FIFV to assist veterans’ spouses in finding employment; and
 - Florida VET program to work with veterans and their spouses to find employment and coordinate with the OVLS to assist veterans and their spouses in obtaining health care licenses.
- Moves statutory provisions relating to veteran health care practitioner fee waivers for initial licenses from s. 456.013, F.S., to s. 456.024, F.S., and adds veteran’s spouses to the waiver, and amends s. 456.0241, F.S., to waive all temporary licensure fees for active duty military.
- Creates the OVLS in MQA, within the DOH, to assist active duty members U.S. Armed Forces, Reserves, and Guard, veterans, and veterans’ spouses who seek to become licensed health care practitioners in this state.
- Requires the OVLS to perform specific functions and to file a report with the Governor, President of the Senate, and Speaker of the House by Veterans Day each year detailing certain information; and
- Appropriates four FTE positions with associated salary rate of 223,879 and the sums of \$380,209 in recurring funds and \$19,356 in nonrecurring funds from the MQA Trust Fund to the DOH for the purpose of implementing the OVLS for the 2023-2024 state fiscal year.

B. Amendments:

None.

By the Committee on Health Policy; and Senators Torres, Wright, Avila, Brodeur, Simon, Powell, Stewart, Osgood, Thompson, and Collins

588-03471-23

2023858c1

1 A bill to be entitled
 2 An act relating to benefits, training, and employment
 3 for veterans and their spouses; amending s. 288.0001,
 4 F.S.; requiring the Economic Development Programs
 5 Evaluation to include a periodic analysis of the
 6 Veterans Employment and Training Services Program;
 7 amending ss. 292.05 and 295.21, F.S.; revising the
 8 duties of the Department of Veterans' Affairs and
 9 Florida Is For Veterans, Inc., respectively, to
 10 include the provision of certain assistance to
 11 veterans' spouses; amending s. 295.22, F.S.; revising
 12 legislative findings and intent; revising the purpose
 13 and duties of the Veterans Employment and Training
 14 Services Program to include provision of certain
 15 assistance to veterans' spouses; requiring priority
 16 for the award of certain grants to be given to
 17 businesses in the health care industry; removing
 18 provisions authorizing grant administration by
 19 CareerSource Florida, Inc.; requiring Florida Is For
 20 Veterans, Inc., to assist veterans or their spouses in
 21 accessing employment and licensure in health care
 22 professions; amending s. 456.013, F.S.; deleting
 23 provisions relating to the waiver of certain fees for
 24 veterans or their spouses; amending s. 456.024, F.S.;
 25 requiring the Department of Health to waive certain
 26 fees for veterans and their spouses under certain
 27 circumstances; providing requirements for application
 28 for such waiver; deleting a limitation on the period
 29 in which a member of the United States Armed Forces

Page 1 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03471-23

2023858c1

30 must receive an honorable discharge from service in
 31 order to be issued a license to practice a health care
 32 profession in this state; requiring the appropriate
 33 board or the department to expedite health care
 34 licensure applications submitted by veterans and to
 35 issue a license within a specified period; amending s.
 36 456.0241, F.S.; deleting provisions relating to
 37 application and renewal fees for temporary
 38 certification of an active duty military health care
 39 practitioner to practice in a regulated profession in
 40 this state; requiring the department to waive the
 41 temporary licensing fee; creating s. 456.0242, F.S.;
 42 establishing the Office of Veteran Licensure Services
 43 within the Division of Medical Quality Assurance;
 44 requiring the office to designate a veteran as
 45 executive director of the office; providing duties of
 46 the office; requiring an annual report to the Governor
 47 and Legislature; providing report requirements;
 48 authorizing the department to adopt rules; providing
 49 appropriations and authorizing positions; providing an
 50 effective date.

52 Be It Enacted by the Legislature of the State of Florida:

53
 54 Section 1. Paragraph (d) of subsection (2) of section
 55 288.0001, Florida Statutes, is amended to read:
 56 288.0001 Economic Development Programs Evaluation.—The
 57 Office of Economic and Demographic Research and the Office of
 58 Program Policy Analysis and Government Accountability (OPPAGA)

Page 2 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03471-23

2023858c1

shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic Development Programs Evaluation.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

(d) By January 1, 2019, and every 3 years thereafter, an analysis of the program grant and entrepreneur initiative ~~programs~~ established under s. 295.22(2) ~~s. 295.22(3)(d) and (e)~~.

Section 2. Subsections (1) and (5) of section 292.05, Florida Statutes, are amended to read:

292.05 Duties of Department of Veterans' Affairs.—

(1) The Department of Veterans' Affairs shall provide assistance to all former, present, and future members of the Armed Forces of the United States and their spouses and dependents in preparing claims for and securing such compensation, hospitalization, career training, and other benefits or privileges to which such persons or any of them are or may become entitled under any federal or state law or regulation by reason of their service in the Armed Forces of the United States. All services rendered under this subsection shall be without charge to the claimant.

(5) The department shall conduct an ongoing study on the problems and needs of those residents of this state who are veterans of the Armed Forces of the United States and the problems and needs of their spouses and dependents. The study shall include, but not be limited to:

(a) A survey of existing state and federal programs

588-03471-23

2023858c1

available for such persons that specifies the extent to which such programs presently are being implemented, with recommendations for the improved implementation, extension, or improvement of such programs.

(b) A survey of the needs of such persons in the areas of social services, health care, education, and employment, and any other areas of determined need, with recommendations regarding federal, state, and community services that would meet those needs.

(c) A survey of federal, state, public, and private moneys available that could be used to defray the costs of state or community services needed for such persons.

Section 3. Subsection (2), paragraph (b) of subsection (3), paragraph (g) of subsection (4), and paragraph (a) of subsection (8) of section 295.21, Florida Statutes, are amended to read:

295.21 Florida Is For Veterans, Inc.—

(2) PURPOSE.—The purpose of the corporation is to promote Florida as a veteran-friendly state that seeks to provide veterans and their spouses with employment opportunities and that promotes the hiring of veterans and their spouses by the business community. The corporation shall encourage retired and recently separated military personnel to remain in the state or to make the state their permanent residence. The corporation shall promote the value of military skill sets to businesses in the state, assist in tailoring the training of veterans and their spouses to match the needs of the employment marketplace, and enhance the entrepreneurial skills of veterans and their spouses.

(3) DUTIES.—The corporation shall:

588-03471-23

2023858c1

(b) Advise the Florida Tourism Industry Marketing Corporation, pursuant to s. 295.23, on:

1. The target market as identified in paragraph (a).
2. Development and implementation of a marketing campaign to encourage members of the target market to remain in the state or to make the state their permanent residence.

3. Methods for disseminating information to the target market that relates to the interests and needs of veterans and their spouses of all ages and facilitates veterans' knowledge of and access to benefits.

(4) GOVERNANCE.—

(g) A majority of the members of the board of directors constitutes a quorum. Board Council meetings may be held via teleconference or other electronic means.

(8) ANNUAL REPORT.—The corporation shall submit an annual progress report and work plan by December 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include:

(a) Status and summary of findings regarding the target market, veteran and spouse benefits, and any identified gaps in services.

Section 4. Subsections (1), (2), and (3) of section 295.22, Florida Statutes, are amended to read:

295.22 Veterans Employment and Training Services Program.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that the state has a compelling interest in ensuring that each veteran or his or her spouse who is a resident of the state finds employment that meets his or her professional goals and receives the training or education necessary to meet those

588-03471-23

2023858c1

goals. The Legislature also finds that connecting dedicated, well-trained veterans with businesses that need a dedicated, well-trained workforce is of paramount importance. The Legislature recognizes that veterans or their spouses may not currently have the skills to meet the workforce needs of Florida employers and may require assistance in obtaining additional workforce training or in transitioning their skills to meet the demands of the marketplace. It is the intent of the Legislature that the Veterans Employment and Training Services Program coordinate and meet the needs of veterans and their spouses and the business community to enhance the economy of this state.

(2) CREATION.—The Veterans Employment and Training Services Program is created within the Department of Veterans' Affairs to assist in linking veterans or their spouses in search of employment with businesses seeking to hire dedicated, well-trained workers. The purpose of the program is to meet the workforce demands of businesses in the state by facilitating access to training and education in high-demand fields for veterans or their spouses.

(3) ADMINISTRATION.—Florida Is For Veterans, Inc., shall administer the Veterans Employment and Training Services Program and perform all of the following functions:

(a) Conduct marketing and recruiting efforts directed at veterans or their spouses who reside in or who have an interest in relocating to this state and who are seeking employment. Marketing must include information related to how a veteran's military experience can be valuable to a business. Such efforts may include attending veteran job fairs and events, hosting events for veterans and their spouses or the business community,

588-03471-23

2023858c1

and using digital and social media and direct mail campaigns.
The corporation shall also include such marketing as part of its main marketing campaign.

(b) Assist veterans or their spouses who reside in or relocate to this state and who are seeking employment. The corporation shall offer skills assessments to veterans or their spouses and assist them in establishing employment goals and applying for and achieving gainful employment.

1. Assessment may include skill match information, skill gap analysis, resume creation, translation of military skills into civilian workforce skills, and translation of military achievements and experience into generally understood civilian workforce skills.

2. Assistance may include providing the veteran or his or her spouse with information on current workforce demand by industry or geographic region, creating employment goals, and aiding or teaching general knowledge related to completing applications. The corporation may provide information related to industry certifications approved by the Department of Education under s. 1008.44 as well as information related to earning academic college credit at public postsecondary educational institutions for college-level training and education acquired in the military under s. 1004.096.

3. The corporation shall encourage veterans or their spouses to register with the state's job bank system and may refer veterans to local one-stop career centers for further services. The corporation shall provide each veteran with information about state workforce programs and shall consolidate information about all available resources on one website that,

588-03471-23

2023858c1

if possible, includes a hyperlink to each resource's website and contact information, if available.

4. Assessment and assistance may be in person or by electronic means, as determined by the corporation to be most efficient and best meet the needs of veterans or their spouses.

(c) Assist Florida businesses in recruiting and hiring veterans and veterans' spouses. The corporation shall provide services to Florida businesses to meet their hiring needs by connecting businesses with suitable veteran applicants for employment. Suitable applicants include veterans or veterans' spouses who have appropriate job skills or may need additional training to meet the specific needs of a business. The corporation shall also provide information about the state and federal benefits of hiring veterans.

(d) Create a grant program to provide funding to assist veterans in meeting the workforce-skill needs of businesses seeking to hire, promote, or generally improve specialized skills of veterans, establish criteria for approval of requests for funding, and maximize the use of funding for this program. Grant funds may be used only in the absence of available veteran-specific federally funded programs. Grants may fund specialized training specific to a particular business.

1. If grant funds are used to provide a technical certificate, a licensure, or a degree, funds may be allocated only upon a review that includes, but is not limited to, documentation of accreditation and licensure. Instruction funded through the program terminates when participants demonstrate competence at the level specified in the request but may not exceed 12 months. Preference shall be given to target industry

588-03471-23

2023858c1

businesses, as defined in s. 288.106, and to businesses in the defense supply, cloud virtualization, health care, or commercial aviation manufacturing industries.

2. Costs and expenditures shall be limited to \$8,000 per veteran trainee. Qualified businesses must cover the entire cost for all of the training provided before receiving reimbursement from the corporation equal to 50 percent of the cost to train a veteran who is a permanent, full-time employee. Eligible costs and expenditures include:

- a. Tuition and fees.
- b. Books and classroom materials.
- c. Rental fees for facilities.

3. Before funds are allocated for a request pursuant to this section, the corporation shall prepare a grant agreement between the business requesting funds and the corporation. Such agreement must include, but need not be limited to:

- a. Identification of the personnel necessary to conduct the instructional program, instructional program description, and any vendors used to conduct the instructional program.
- b. Identification of the estimated duration of the instructional program.
- c. Identification of all direct, training-related costs.
- d. Identification of special program requirements that are not otherwise addressed in the agreement.
- e. Permission to access aggregate information specific to the wages and performance of participants upon the completion of instruction for evaluation purposes. The agreement must specify that any evaluation published subsequent to the instruction may not identify the employer or any individual participant.

588-03471-23

2023858c1

4. A business may receive a grant under the Quick-Response Training Program created under s. 288.047 and a grant under this section for the same veteran trainee. ~~If a business receives funds under both programs, one grant agreement may be entered into with CareerSource Florida, Inc., as the grant administrator.~~

(e) Contract with one or more entities to administer an entrepreneur initiative program for veterans in this state which connects business leaders in the state with veterans seeking to become entrepreneurs.

1. The corporation shall award each contract in accordance with the competitive bidding requirements in s. 287.057 to one or more public or private entities that:

- a. Demonstrate the ability to implement the program and the commitment of resources, including financial resources, to such programs.
- b. Have a demonstrated experience working with veteran entrepreneurs.
- c. As determined by the corporation, have been recognized for their performance in assisting entrepreneurs to launch successful businesses in the state.

2. Each contract must include performance metrics, including a focus on employment and business creation. The entity may also work with a university or college offering related programs to refer veterans or to provide services. The entrepreneur initiative program may include activities and assistance such as peer-to-peer learning sessions, mentoring, technical assistance, business roundtables, networking opportunities, support of student organizations, speaker series,

588-03471-23

2023858c1

or other tools within a virtual environment.

(f) As the state's principal assistance organization under the United States Department of Defense's SkillBridge program for qualified businesses in this state and for transitioning servicemembers who reside in, or who wish to reside in, this state, the corporation shall:

1. Establish and maintain, as applicable, its certification for the SkillBridge program or any other similar workforce training and transition programs established by the United States Department of Defense;

2. Educate businesses, business associations, and transitioning servicemembers on the SkillBridge program and its benefits, and educate military command and personnel within the state on the opportunities available to transitioning servicemembers through the SkillBridge program;

3. Assist businesses in obtaining approval for skilled workforce training curricula under the SkillBridge program, including, but not limited to, apprenticeships, internships, or fellowships; and

4. Match transitioning servicemembers who are deemed eligible for SkillBridge participation by their military command with training opportunities offered by the corporation or participating businesses, with the intent of having transitioning servicemembers achieve gainful employment in this state upon completion of their SkillBridge training.

(g) Assist veterans and their spouses in accessing training, education, and employment in health care professions.

(h) Coordinate with the Office of Veteran Licensure Services within the Department of Health to assist veterans and

588-03471-23

2023858c1

their spouses in obtaining licensure pursuant to s. 456.024.

Section 5. Subsection (13) of section 456.013, Florida Statutes, is amended to read:

456.013 Department; general licensing provisions.—

~~(13) The department shall waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran or his or her spouse at the time of discharge, if he or she applies to the department for an initial license within 60 months after the veteran is honorably discharged from any branch of the United States Armed Forces. The applicant must apply for the fee waiver using a form prescribed by the department and must submit supporting documentation as required by the department.~~

Section 6. Section 456.024, Florida Statutes, is amended to read:

456.024 Members of Armed Forces and veterans in good standing with administrative boards or the department; spouses; licensure.—

(1) ~~A~~ Any member of the United States Armed Forces ~~of the United States now or hereafter~~ on active duty who, at the time of becoming such a member, was in good standing with a health care practitioner ~~any administrative board of the state, or the department when there is no board, and was entitled to practice a health care or engage in his or her profession or vocation in this the state shall be kept in good standing by such administrative board, or the department when there is no board,~~ without registering, paying ~~dues or~~ fees, or performing any other act ~~on his or her part to be performed, as long as the member is he or she is a member of the Armed Forces of the~~

588-03471-23

2023858c1

349 ~~United States~~ on active duty and for a ~~period of 6 months after~~
 350 ~~discharge and from active duty as a member of the Armed Forces~~
 351 ~~of the United States, provided he or she is not practicing~~
 352 ~~engaged in~~ his or her licensed profession ~~or vocation~~ in the
 353 private sector for profit.

354 (2) The department shall waive the initial licensing fee,
 355 the initial application fee, and the initial unlicensed activity
 356 fee for a veteran or his or her spouse if the veteran is
 357 honorably discharged from any branch of the United States Armed
 358 Forces. The applicant must apply for the fee waiver using a form
 359 prescribed by the department and must submit supporting
 360 documentation as required by the department. The applicant may
 361 apply for a fee waiver up to 6 months before discharge.

362 (3) The boards listed in s. 20.43, or the department when
 363 there is no board, shall adopt rules exempting the spouses of
 364 members of the Armed Forces of the United States from licensure
 365 renewal provisions, but only in cases of absence from the state
 366 because of their spouses' duties with the Armed Forces.

367 (4) (a) ~~(3) (a)~~ A person is eligible for licensure as a health
 368 care practitioner in this state if he or she:

369 1. Serves or has served as a health care practitioner in
 370 the United States Armed Forces, the United States Reserve
 371 Forces, or the National Guard;

372 2. Serves or has served on active duty with the United
 373 States Armed Forces as a health care practitioner in the United
 374 States Public Health Service; or

375 3. Is a health care practitioner in another state, the
 376 District of Columbia, or a possession or territory of the United
 377 States and is the spouse of a person serving on active duty with

588-03471-23

2023858c1

378 the United States Armed Forces.

379
 380 The department shall develop an application form, and each
 381 board, or the department if there is no board, shall waive the
 382 application fee, licensure fee, and unlicensed activity fee for
 383 such applicants. For purposes of this subsection, "health care
 384 practitioner" means a health care practitioner as defined in s.
 385 456.001 and a person licensed under part III of chapter 401 or
 386 part IV of chapter 468.

387 (b) The board, or the department if there is no board,
 388 shall issue a license to practice in this state to a person who:

389 1. Submits a complete application.

390 2. If he or she is a member of the United States Armed
 391 Forces, the United States Reserve Forces, or the National Guard,
 392 submits proof that he or she has received an honorable discharge
 393 within 6 months before, or will receive an honorable discharge
 394 ~~within 6 months~~ after, the date of submission of the
 395 application.

396 3.a. Holds an active, unencumbered license issued by
 397 another state, the District of Columbia, or a possession or
 398 territory of the United States and who has not had disciplinary
 399 action taken against him or her in the 5 years preceding the
 400 date of submission of the application;

401 b. Is a military health care practitioner in a profession
 402 for which licensure in a state or jurisdiction is not required
 403 to practice in the United States Armed Forces, if he or she
 404 submits to the department evidence of military training or
 405 experience substantially equivalent to the requirements for
 406 licensure in this state in that profession and evidence that he

588-03471-23

2023858c1

or she has obtained a passing score on the appropriate examination of a national or regional standards organization if required for licensure in this state; or

c. Is the spouse of a person serving on active duty in the United States Armed Forces and is a health care practitioner in a profession for which licensure in another state or jurisdiction is not required, if he or she submits to the department evidence of training or experience substantially equivalent to the requirements for licensure in this state in that profession and evidence that he or she has obtained a passing score on the appropriate examination of a national or regional standards organization if required for licensure in this state.

4. Attests that he or she is not, at the time of submission of the application, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying.

5. Actively practiced the profession for which he or she is applying for the 3 years preceding the date of submission of the application.

6. Submits a set of fingerprints for a background screening pursuant to s. 456.0135, if required for the profession for which he or she is applying.

The department shall verify information submitted by the applicant under this subsection using the National Practitioner Data Bank.

(c) Each applicant who meets the requirements of this

588-03471-23

2023858c1

subsection shall be licensed with all rights and responsibilities as defined by law. The applicable board, or the department if there is no board, may deny an application if the applicant has been convicted of or pled guilty or nolo contendere to, regardless of adjudication, a ~~any~~ felony or misdemeanor related to the practice of a health care profession regulated by this state.

(d) An applicant for initial licensure under this subsection must submit the information required by ss. 456.039(1) and 456.0391(1) no later than 1 year after the license is issued.

(5) (a) (4) (a) The board, or the department if there is no board, shall issue a professional license to the spouse of an active duty member of the United States Armed Forces ~~of the United States~~ who submits all of the following to the department:

1. A completed application upon a form prepared and furnished by the department in accordance with the board's rules.~~;~~

2. Proof that the applicant is married to a member of the United States Armed Forces ~~of the United States~~ who is on active duty.~~;~~

3. Proof that the applicant holds a valid license for the profession issued by another state, the District of Columbia, or a possession or territory of the United States~~,~~ and is not the subject of any disciplinary proceeding in any jurisdiction in which the applicant holds a license to practice a profession regulated by this chapter.~~;~~

4. Proof that the applicant's spouse is assigned to a duty

588-03471-23

2023858c1

station in this state pursuant to the member's official active
duty military orders, ~~and~~

5. Proof that the applicant would otherwise be entitled to
full licensure under the appropriate practice act, ~~and~~ is
eligible to take the respective licensure examination as
required in Florida.

(b) The applicant must also submit to the Department of Law
Enforcement a complete set of fingerprints. The Department of
Law Enforcement shall conduct a statewide criminal history check
and forward the fingerprints to the Federal Bureau of
Investigation for a national criminal history check.

(c) Each board, or the department if there is no board,
shall review the results of the state and federal criminal
history checks according to the level 2 screening standards in
s. 435.04 when granting an exemption and when granting or
denying the license.

(d) The applicant shall pay the cost of fingerprint
processing. If the fingerprints are submitted through an
authorized agency or vendor, the agency or vendor shall collect
the required processing fees and remit the fees to the
Department of Law Enforcement.

(e) The department shall waive the applicant's licensure
application fee.

(f) An applicant for a license under this subsection is
subject to ~~the requirements under~~ s. 456.013(3)(a) and (c).

(g) An applicant shall be deemed ineligible for a license
pursuant to this section if the applicant:

1. Has been convicted of or pled nolo contendere to,
regardless of adjudication, any felony or misdemeanor related to

588-03471-23

2023858c1

the practice of a health care profession;

2. Has had a health care provider license revoked or
suspended from another of the United States, the District of
Columbia, or a United States territory;

3. Has been reported to the National Practitioner Data
Bank, unless the applicant has successfully appealed to have his
or her name removed from the data bank; or

4. Has previously failed the Florida examination required
to receive a license to practice the profession for which the
applicant is seeking a license.

(h) The board, or the department if there is no board, may
revoke a license upon finding that the individual violated the
profession's governing practice act.

(i) The board, or the department if there is no board,
shall expedite all applications submitted by a spouse of an
active duty member or veteran of the United States Armed Forces
~~of the United States~~ pursuant to this subsection and shall issue
a license within 7 days after receipt of all required
documentation for such application.

~~(6)-(5)~~ The spouse of a person serving on active duty with
the United States Armed Forces shall have a defense to any
citation and related cause of action brought under s. 456.065 if
the following conditions are met:

(a) The spouse holds an active, unencumbered license issued
by another state or jurisdiction to provide health care services
for which there is no equivalent license in this state.

(b) The spouse is providing health care services within the
scope of practice of the out-of-state license.

(c) The training or experience required by the out-of-state

588-03471-23

2023858c1

license is substantially similar to the license requirements to practice a similar health care profession in this state.

Section 7. Paragraph (b) of subsection (2) and subsection (6) of section 456.0241, Florida Statutes, are amended, and a new subsection (7) is added to that section, to read:

456.0241 Temporary certificate for active duty military health care practitioners.—

(2) The department may issue a temporary certificate to an active duty military health care practitioner to practice in a regulated profession in this state if the applicant:

(b) Submits a complete application ~~and a nonrefundable application fee.~~

The department shall verify information submitted by the applicant under this subsection using the National Practitioner Data Bank.

~~(6) The department shall, by rule, set an application fee not to exceed \$50 and a renewal fee not to exceed \$50.~~

(7) The department shall waive the temporary licensing fee.

Section 8. Section 456.0242, Florida Statutes, is created to read:

456.0242 Office of Veteran Licensure Services.—

(1) The Office of Veteran Licensure Services is established within the Division of Medical Quality Assurance. The office shall assist active duty members of the United States Armed Forces, the United States Reserve Forces, and the National Guard, veterans, and the spouses of veterans who seek to become a licensed health care practitioner in this state.

(2) The office shall be headed by an executive director,

588-03471-23

2023858c1

designated by the department, who must be a veteran.

(3) The office shall:

(a) Provide information, guidance, direction, and assistance with the licensure process.

(b) Coordinate with each board, or the department if there is no board, to expedite all applications submitted pursuant to s. 456.024.

(c) Refer an individual requesting assistance with resume writing and proofreading, job application completion, and interviewing skills and techniques to Florida Is For Veterans, Inc.

(d) Refer an individual requesting information about educational or employment opportunities in health care professions to Florida Is For Veterans, Inc.

(e) Submit a report by November 11 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must categorize each individual as an active duty member, a veteran, or a veteran's spouse and must include, but is not limited to:

1. The number of individuals served.

2. The educational and training background of each individual seeking licensure.

3. Each health care license an individual holds in another state, irrespective of the current status of such license.

4. The number of licensure applications received.

5. The average number of calendar days required to license a qualified applicant.

6. The number of referrals made for vocational assistance.

(4) The department may adopt rules necessary to implement

588-03471-23

2023858c1

581 this section.

582 Section 9. For the 2023-2024 fiscal year, four full-time
583 equivalent positions with associated salary rate of 223,879 are
584 authorized and the sums of \$380,209 in recurring funds and
585 \$19,356 in nonrecurring funds from the Medical Quality Assurance
586 Trust Fund are appropriated to the Department of Health for the
587 purpose of implementing this act.

588 Section 10. This act shall take effect July 1, 2023.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Tab 5

SB 858

Bill Number or Topic

4/18/23

Meeting Date

HHS Approps

Committee

Amendment Barcode (if applicable)

Name

Bob Asztalos

Phone

850-284-1166

Address

The Capitol Room 2105

Street

Email

bob.Asztalos@fla.fl.gov

Tallahassee

City

FL

State

32399

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Florida Department of
Veteran Affairs

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

BILL: CS/SB 1084

INTRODUCER: Appropriations Committee on Health and Human Services and Senator Trumbull

SUBJECT: Long-term Managed Care Program

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Brown</u>	<u>HP</u>	Favorable
2.	<u>Gerbrandt</u>	<u>Money</u>	<u>AHS</u>	Fav/CS
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1084 creates s. 409.9855, F.S., to establish a Medicaid long-term care managed care pilot program in certain counties to integrate health care services, long-term care services, and home and community-based services for persons with developmental disabilities. The pilot program will be available, on a volunteer basis, to Medicaid eligible individuals on the iBudget waitlist.

The bill is likely to have a significant negative fiscal impact. Neither the Agency for Health Care Administration (AHCA), which operates the state's Medicaid program, nor the Agency for Persons with Disabilities, which administers the iBudget Wavier, have submitted an estimate of the bill's potential fiscal impact. See Section V. of this analysis.

The bill takes effect upon becoming a law.

II. Present Situation:

The Florida Medicaid Program

Florida Medicaid is the health care safety net for low-income Floridians. The national Medicaid program is a partnership of federal and state governments established to provide coverage for health services for eligible persons. Florida's program is financed through state and federal funds.¹

¹ Section 20.42, F.S.

The Agency for Health Care Administration (AHCA) is the single state agency responsible for the administration of the Florida Medicaid program, authorized under Title XIX of the Social Security Act (SSA).² This authority includes establishing and maintaining a Medicaid state plan approved by the federal Centers for Medicare & Medicaid Services (CMS) and maintaining any Medicaid waivers needed to operate the Florida Medicaid program as directed by Florida Statute,³ the General Appropriations Act (GAA), and other legislation accompanying the GAA.

A Medicaid state plan is an agreement between a state and the federal government describing how that state administers its Medicaid programs. The state plan establishes groups of individuals covered under the Medicaid program, services that are provided, payment methodologies, and other administrative and organizational requirements. State Medicaid programs may request from CMS a formal waiver of the requirements codified in the SSA, which provides states flexibility in providing services not afforded through their Medicaid state plan.

Statewide Medicaid Managed Care

In Florida, a large majority of Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the Statewide Medicaid Managed Care (SMMC) program.⁴ Other recipients who are not eligible for managed care, are not subject to mandatory managed care enrollment, or are not yet enrolled in a plan, are provided services directly from health care practitioners or facilities, and in those cases, providers are paid on a fee-for-service basis.

SMMC has three components:

- Managed Medical Assistance (MMA), under which the AHCA makes payments for primary and acute medical treatments and related services using a managed care model;
- Long-term Care Managed Care (LTCMC), under which the AHCA makes payments for long-term care, including home and community-based services, using a managed care model; and
- The Medicaid Prepaid Dental Health Program (Prepaid Dental), under which the AHCA makes payments for dental services for children and adults using a managed care model.

SMMC benefits are authorized through federal waivers and are specifically required by the Florida Legislature in ss. 409.973 and 409.98, F.S. SMMC benefits cover primary, acute, preventive, behavioral health, prescribed drugs, long-term care, and dental services. Section 409.973, F.S., specifies the minimum services that must be provided by managed care plans:

² Section 409.963, F.S.

³ See parts III and IV of ch. 409, F.S.

⁴ As of January 31, 2023, Florida Medicaid's total enrollment comprised 5,696,638 persons. Eighty-seven percent were enrolled in a Medicaid managed care plan. See: https://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/docs/ENR_202301.xls (last visited March 9, 2023).

Managed Care Plan Benefits⁵	
Advanced practice registered nurse services	Medical supplies, equipment, prostheses, and orthoses
Ambulatory surgical treatment center services	Mental health services
Birthing center services	Nursing care
Chiropractic services	Optical services and supplies
Donor human milk bank services	Optometrist services
Early periodic screening diagnosis and treatment services for recipients under age 21	Physical, occupational, respiratory, and speech therapy services
Emergency services	Physician services, including physician assistant services
Family planning services and supplies. Pursuant to 42 C.F.R. s. 438.102, plans may elect to not provide these services due to an objection on moral or religious grounds, and must notify the agency of that election when submitting a reply to an invitation to negotiate	Podiatric services
Healthy start services, except as provided in s. 409.975(4)	Prescription drugs
Hearing services	Renal dialysis services
Home health agency services	Respiratory equipment and supplies
Hospice services	Rural health clinic services
Hospital inpatient services	Substance abuse treatment services
Hospital outpatient services	Transportation to access covered services
Laboratory and imaging services	

Florida Medicaid does not cover all low-income Floridians. Current eligibility prioritizes low-income children, disabled persons, and elders, and sets income eligibility by reference to the annual federal poverty level. For some groups, clinical eligibility provisions apply, as well.

The Florida Medicaid program covers:⁶

- More than 5.5 million low-income individuals, including approximately 2.5 million children, or 54 percent of the children in Florida;
- More than 54 percent of the births occurring in Florida in calendar year 2020; and
- More than 60 percent of the nursing home days in Florida.

Types of Comprehensive Medicaid Managed Care Plans

Comprehensive services in SMMC are managed by two types of managed care plans: traditional managed care organizations and provider service networks (PSNs). Traditional managed care organizations are usually health insurers or health maintenance organizations (HMOs). PSNs are managed care plans that are owned or are majority-controlled by health care providers, such as physician groups or hospitals.

⁵ Section 409.973, F.S.

⁶ Agency for Health Care Administration, Presentation to the Senate Health Policy Committee, Jan. 23, 2023.

All managed care plans in SMMC, including PSNs, are reimbursed as prepaid plans. That is, they are paid capitated rates (prospective, per-member, per-month payments) by the AHCA in advance for any particular month and are expected to provide medically necessary services to their respective members during that month, using the dollars within that month's capitation. Medically necessary services are required to be provided regardless of whether the capitation includes all the dollars necessary to provide those services.⁷

The AHCA contracts with managed care plans on a statewide and regional basis, in sufficient numbers to ensure choice. The cyclical Medicaid procurement process ensures plans offer competitive benefit designs and prices. In addition, plans compete for consumer choice. That is, while Medicaid requires a basic benefit package, and regulates the adequacy of plans' provider networks, plans can add to their benefit packages and offer provider networks attractive to Medicaid recipients when choosing a plan.

The AHCA began the next procurement process in 2022 for implementation in the 2025 plan year and released the re-procurement solicitation documents on April 11, 2023.⁸

Medicaid Long-Term Care

Federal Medicaid law establishes coverage for institutional care, such as nursing home care and residential institutions for people with developmental disabilities, but does not allow federal dollars to be spent on alternatives to such care. Those alternatives include home and community-based services designed to keep people in their homes and communities instead of going into an institution when they need higher levels of care. This federal spending limitation creates a bias toward institutional care, and toward acute care, rather than allowing the non-acute supports that prevent institutionalization.

Florida obtained federal waivers to allow the state Medicaid program to cover other kinds of long-term care services for elders and people with disabilities, to prevent admission into a nursing home. The Medicaid Long-term Care Waiver provides services to eligible individuals age 18 or older who need long-term services and supports, including individuals over the age of 18 with a diagnosis of cystic fibrosis, AIDS, or a traumatic brain or spinal cord injury. The Long-term Care Waiver is designed to delay or prevent institutionalization and allow waiver recipients to maintain stable health while receiving services at home and in the community. Individuals in the program may also be served in a nursing facility setting. The Long-Term Care Waiver is a capitated, managed care program.

Section 409.98, F.S., specifies the non-institutional, often non-acute, long-term care benefits that must be provided by the long-term care managed care program:

⁷ See s. 409.968(1) and (2), F.S.

⁸ Agency for Health Care Administration, Presentation to the Senate Health Policy Committee, Jan. 23, 2023.

SMMC Long-Term Care Mandatory Benefits	
Services provided in an ALF	Physical therapy
Hospice services	Intermittent and skilled nursing
Adult day care	Medication administration
Personal care	Medication management
Home accessibility adaption	Nutritional assessment and risk reduction
Behavior management	Caregiver training
Home-delivered meals	Respite care
Case management	Personal emergency response system
Occupational therapy	Transportation
Speech therapy	Medical equipment and supplies
Respiratory therapy	Nursing Facility Care Services

Medicaid Home and Community-Based Waiver for Persons with Developmental Disabilities

Under federal law, fee-for-service Medicaid provides coverage for health care services to cure or ameliorate diseases. Generally, Medicaid does not cover services that will not cure or mitigate a medical diagnosis. However, people with developmental disabilities, while certainly requiring traditional medical services, need other kinds of services to maintain their independence and avoid institutionalization. Home and community-based services (HCBS) can be provided to assist people with developmental disabilities with activities of daily living which enables them to live in their homes or communities, rather than moving to a facility for care.

To obtain federal Medicaid funding for HCBS, Florida obtained a Medicaid waiver.⁹ This allows coverage of non-medical services to avoid institutionalization and allows the state to limit the scope of the program to the number of enrollees deemed affordable by the state. In this way, the HCBS waiver is not an entitlement; it is a first-come, first-served, slot-limited program.

The HCBS waiver, known as iBudget Florida, serves eligible¹⁰ persons with developmental disabilities. Eligible diagnoses include disorders or syndromes attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome. The disorder must manifest before the age of 18, and it must constitute a substantial handicap that can reasonably be expected to continue indefinitely.¹¹

The Agency for Persons with Disabilities (APD) administers the iBudget program with the stated purpose of:

⁹ Florida Developmental Disabilities Individual Budgeting Waiver (0867.R02.00), March 4, 2011, authorized under s. 1915b of the Social Security Act.

¹⁰ The HCBS waiver retains the Medicaid requirement that enrollees be low-income, but measures only the developmentally disabled person's income; not the income generated by the whole household.

¹¹ Section 393.063(12), F.S.

- Promoting and maintaining the health and welfare of eligible individuals with developmental disabilities.
- Providing medically necessary supports and services to delay or prevent institutionalization.
- Fostering the principles of self-determination as a foundation for services and supports.¹²

Section 393.066 (3), F.S., specifies that community-based services offered through the iBudget must include the following medically necessary services to prevent institutionalization:

Home and Community-Based Services¹³	
Adult Day Training	Respite Services
Family Care Services	Social Services
Guardian Advocate Referral Services	Physical, Occupational, Respiratory, and Speech Therapy
Medical/Dental Services	Supported Employment
Parent Training	Supported Living
Personal Care Services	Behavioral Services
Recreation	Transportations
Residential Facility Services	Residential Habilitation

Under the broad service categories specified in s. 393.066(3), F.S., the APD offers 26 supports and services delivered by contracted service providers to assist individuals to live in their own homes or the community.¹⁴ These 26 services include:

- Adult day training.
- Behavioral analysis services.
- Behavior assistant services.
- Companion services.
- Consumable medical supplies.
- Dietician services.
- Durable medical equipment and supplies.
- Environmental accessibility and adaptations.
- Occupational therapy.
- Personal emergency response systems.
- Personal supports.
- Physical therapy.
- Prevocational service.
- Private duty nursing.
- Residential habilitation, including the following levels:
 - Standard level.
 - Behavior-focused level.
 - Intensive-behavior level.
 - Enhanced-intensive-behavior level.

¹² Agency for Health Care Administration, *Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook*, September 2021.

¹³ Section 393.006(3), F.S.

¹⁴ *Supra*, note 11.

- Residential nursing services.
- Respiratory therapy.
- Respite Care.
- Skilled Nursing.
- Specialized medical home care.
- Specialized mental health counseling.
- Speech therapy.
- Support coordination.
- Supported employment.
- Supported living coaching.
- Transportation.¹⁵

Currently, HCBS services are not integrated with Medicaid acute medical services, as those services are administered for iBudget enrollees by the AHCA, usually through the fee-for service model, not through SMMC. However, every iBudget enrollee receives case management services from a waiver support coordinator. Waiver support coordinators are responsible for identifying, coordinating, and accessing supports and services from all available funding sources for iBudget enrollees, including Medicaid state plan services.

Florida law requires that Medicaid be the payer of last resort for medically necessary supports and services,¹⁶ and that iBudget enrollees use all available services authorized under the Medicaid state plan, school-based services, private insurance and other benefits, prior to using iBudget Waiver funds.¹⁷ Therefore waiver support coordinators must first obtain supports and services from third party payers, other government or community programs, school-based programs, and natural supports.

Historically, despite the utilization management tools authorized by law and the entitlement flexibilities provided by the federal waiver, APD has frequently been unable to manage the iBudget program within the budget appropriated by the legislature, resulting in significant deficits¹⁸ and surpluses.¹⁹

In 2019, the Legislature directed the APD to implement better monitoring and accounting procedures and to take corrective action when deficits are projected to develop. Additionally, APD was required to develop a plan to redesign the iBudget program if a deficit were to reoccur

¹⁵ All providers must be in compliance with the provider qualifications as stated in the Florida Medicaid Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook, September 2021, incorporated by reference in rule 59G-13.070, F.A.C. The handbook is available on the Agency for Health Care Administration's Web site at: <http://ahca.myflorida.com/Medicaid/review/index.shtml>, and at <http://www.flrules.org/Gateway/reference.asp?No=Ref-13442> (last visited April 17, 2023).

¹⁶ Section 409.910, F.S.

¹⁷ 393.0662(3), F.S.

¹⁸ For example, the legislature made retroactive general revenue appropriations to address APD deficits that occurred in Fiscal Year's 2017-2018 (\$22.0 million), 2018-2019 (\$41.2 million), and 2019-2020 (\$50.8 million). *See*, the Fiscal Year 2019-2020 General Appropriations Act, section 30 and the Fiscal Year 2020-2021 General Appropriations Act, sections 29 and 30, respectively.

¹⁹ The APD's historical deficits have been offset by more recent general revenue surpluses of \$11.3 million, \$1.0 million and \$39.6 million in Fiscal Year's 2019-2020, 2020-2021, and 2021-2022, respectively. Data was retrieved from the Legislative Budgeting System.

in the 2018-2019 fiscal year.²⁰ The APD did generate a deficit that year and submitted a plan to address the budget shortfall that included the following recommendations:

- Include the iBudget Waiver in the Social Services Estimating Conference;
- Implement a behavioral health Intermediate Care Facility service rate;
- Implement individual caps for iBudget clients;
- Implement budget transfers from the Medicaid state plan to the iBudget waiver for clients turning 21;
- Expand the Medicaid Assistive Care Services program to include APD group homes;
- Centralize the significant additional needs process;
- Implement service limitations on Life Skills Development services; and
- Restructure support coordination services.²¹

In 2020, Senate Bill 82 was passed and addressed some of the recommendations from the APD's iBudget waiver redesign plan, specifically the bill:

- Centralized the significant additional needs process at APD headquarters; and
- Restructured support coordination services.²²

For FY 2022-2023, the Legislature appropriated \$1,871,531,214 to APD for the iBudget waiver program, of which \$742,997,892 are state funds.²³ Currently, the program serves over 35,300 enrolled people.²⁴

iBudget Waiver Waitlist

The APD maintains a waitlist of people who would like to enroll in the iBudget. Currently, the waitlist includes 22,535 people. About 660 of those receive other, limited, services from APD, and over 9,000 people on the waitlist are otherwise eligible for, and receive, Medicaid coverage for medical care. About 13,500 people on the waiver waitlist receive no APD or Medicaid services.²⁵

As new funding becomes available, APD enrolls people from the waitlist in a statutory order of priority in seven categories:²⁶

- Category 1 – Clients deemed to be in crisis.
- Category 2 – Specified children from the child welfare system.²⁷

²⁰ Chapter 2019-116, s. 26, Laws of Fla.

²¹ Agency for Persons with Disabilities and Agency for Health Care Administration, 2019 iBudget Waiver Redesign, Sept. 30, 2019.

²² Chapter 2020-71, Laws of Florida

²³ Chapter 2022-156, Laws of Fla., Specific Appropriation 245.

²⁴ Agency for Persons with Disabilities, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2022-2023*, Nov. 15, 2023, available at: <https://apd.myflorida.com/publications/reports/docs/FY%202023%20Quarterly%20Report%201st%20Quarter%20report.pdf> (last viewed Mar. 24, 2023).

²⁵ Agency for Persons with Disabilities, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2022-2023*, Nov. 15, 2023, available at: <https://apd.myflorida.com/publications/reports/docs/FY%202023%20Quarterly%20Report%201st%20Quarter%20report.pdf> (last viewed Mar. 24, 2023).

²⁶ Section 393.065(5), F.S.

²⁷ See s. 393.065(5)(b), F.S., for specific criteria.

- Category 3 – Includes, but is not limited to, clients:
 - Whose caregiver has a documented condition that is expected to render the caregiver unable to provide care within the next 12 months and for whom a caregiver is required but no alternate caregiver is available;
 - Who are at substantial risk of incarceration or court commitment without supports;
 - Whose documented behaviors or physical needs place them or their caregiver at risk of serious harm and other supports are not currently available to alleviate the situation; or
 - Who are identified as ready for discharge within the next year from a state mental health hospital or skilled nursing facility and who require a caregiver but for whom no caregiver is available.
- Category 4 – Includes, but is not limited to, clients whose caregivers are 70 years of age or older and for whom a caregiver is required but no alternate caregiver is available;
- Category 5 – Includes, but is not limited to, clients who are expected to graduate within the next 12 months from secondary school and need support to obtain or maintain competitive employment, or to pursue an accredited program of postsecondary education to which they have been accepted.
- Category 6 – Clients 21 years of age or older who do not meet the criteria for categories 1-5.
- Category 7 – Clients younger than 21 years of age who do not meet the criteria for categories 1-4.²⁸

APD rarely moves beyond Category 1 (individuals experiencing a crisis) in enrolling people off the wait list. In Fiscal Years 2020-2021 and 2021-2022, for example, APD enrolled a total of 2,646 new enrollees in the waiver program. Of those, 1,841 (70%) were Category 1 enrollees.²⁹

Medicaid Coverage for iBudget Enrollees

iBudget waiver benefits include Medicaid coverage for medical services, administered by the AHCA. The vast majority of full-coverage Medicaid recipients receive services through the SMMC managed care model, in which the recipient can choose from different health plans to provide their care. However, under current law, using the managed care model is an option for iBudget enrollees – not a requirement. iBudget participants may opt to use the traditional fee-for-service model of service delivery.³⁰

Medical services and HCBS are currently not integrated because they are provided by two different programs in two different state agencies.

²⁸ Section 393.065(5), F.S.

²⁹ Of the 2,646 new enrollees, 182 were in Category 2 (children aging out of the child welfare system); the remainder were in special categories authorized by the legislature to jump the queue (military dependents, people with Phelan-McDermid Syndrome, and people in ICFs or nursing facilities), *see* s. 393.064(6), (7), F.S. *See*, Agency for Persons with Disabilities, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2022-2023*, Nov. 15, 2023, available at: <https://apd.myflorida.com/publications/reports/docs/FY%202023%20Quarterly%20Report%201st%20Quarter%20report.pdf> (last viewed Mar. 24, 2023).

³⁰ Section 409.972(1)(e), F.S.

Person-Centered Planning

Currently, all iBudget recipients are required to receive case management and person-centered planning.³¹ A person-centered service plan reflects the services and supports that are important to the individual in meeting their long-term goals, and the preferences for the delivery of such services and supports.

HCBS and Managed Care Models

Some states use managed care models for HCBS for persons with developmental disabilities, in varying forms.

Iowa and Kansas use a long-term care managed care model to provide developmental disability services. These states use a single, risk-bearing, managed care plan to coordinate all services for this population, including primary care, acute care, behavioral health, and long-term care services. Tennessee takes a similar approach, but its managed care plans do not bear risk.³²

New York obtained a federal waiver to transition the Medicaid developmental disability population into managed care based on a phased-in model, beginning with integrated care coordination under a single, comprehensive plan. In addition, New York operates a service delivery model that fully integrates with Medicare coverage, for persons eligible for both programs, offering primary, acute, long-term care, and habilitation services.³³

Using managed care for the developmental disability population requires careful adaptation of acute care models to address factors that differentiate this population from a typical long-term care population. These factors include: the longer length of time individuals will require these services, often for a lifetime; the role of community services and supports and the need to integrate them into the model; and the unique developmental disability provider community, composed of smaller organizations exclusively dependent on government funding and inexperienced at navigating a managed care environment; among other differentiating factors.³⁴

Florida does not use a risk-based managed care model for HCBS services, and the Medicaid managed care model is rarely used by iBudget enrollees. Medicaid acute care services and HCBS services are not integrated, or coordinated, by any single entity for individual enrollees.

³¹ 42 C.F.R. 441.301(c)(1)

³² National Association of States United for Aging and Disabilities, MLTSS Institute, “MLTSS for People with Intellectual and Developmental Disabilities: Strategies for Success (2018), available at: http://www.advancingstates.org/sites/nasuad/files/2018%20MLTSS%20for%20People%20with%20IDD-%20Strategies%20for%20Success_0.pdf (last viewed Mar. 24, 2023).

³³ Center for Health Care Strategies, “Enrolling Individuals in Intellectual/Developmental Disabilities in Managed Care: A strategy for Strengthening Long-Term Services and Supports”, March 2019, available at: https://www.chcs.org/media/Integration-Strategy-3-Strengthening-LTSS-Toolkit_032019.pdf (last viewed March 24, 2023).

³⁴ *Id.*

III. Effect of Proposed Changes:

Managed Care Pilot Program for Individuals with Developmental Disabilities

CS/SB 1084 creates s. 409.9855, F.S., to establish a Medicaid managed care pilot program to provide comprehensive, integrated medical, long-term, and home and community-based services to individuals with developmental disabilities. The pilot program will operate in Hardee, Highlands, Hillsborough, Manatee, Polk, Miami-Dade and Monroe counties (Medicaid regions D and I). The Agency for Health Care Administration (AHCA) is required to seek federal approval to implement the pilot program by September 1, 2023.

Under the pilot program the AHCA is responsible for the following:

- Seeking federal authority to amend the Medicaid state plan to implement the pilot program;
- Adopting rules necessary to comply with any federal requirements related to the pilot program and implementation of the pilot program;³⁵
- Negotiating with and selecting qualified plans to participate in the pilot program;
- Ensuring that the rate setting methodology is inclusive of the intent to provide individualized, quality care in the least restrictive setting;
- Making payments for services under the pilot program;
- Ensuring minimum contract standards are met, including, but not limited to, data collection, access, quality care, complaint resolution, claims payment, and transparency;³⁶
- Evaluating the feasibility of statewide implementation of the capitated managed care model used by the pilot program to serve individuals with developmental disabilities; and
- Delegating specific duties to the Agency for Persons with Disabilities (APD).

Under the pilot program the APD is responsible for the following:

- Being a part of the negotiating team that selects plans to participate in the pilot program;
- Conducting an initial needs assessment to determine the level of functional, behavioral, and physical needs of the prospective participant;
- Making enrollment offers;
- Ensuring services are provided in accordance with an individualized care plan;
- Ensuring the capitation rate setting methodology is inclusive of the intent to provide individualized, quality care in the least restrictive setting;
- Auditing selected plans implementation of person-centered planning;
- Providing progress reports on implementation of the pilot program, and annual reports on operation of the pilot program; and
- Evaluating specific measures of access, quality, and costs of the pilot program.

Participant Eligibility

Participation in the pilot program is limited to the maximum number of enrollees specified in the General Appropriations Act, if any. The APD is required to make enrollment offers and to ensure

³⁵ The bill specifies, that unless otherwise stated ss. 409.961-409.969, F.S., apply to the pilot program. As such, s. 409.961, F.S., authorizes the ACHA to adopt rules as necessary to comply with federal requirements and administer the Medicaid Managed Care Program.

³⁶ The bill specifies, that unless otherwise stated ss. 409.961-409.969, F.S., apply to the pilot program. As such, s. 409.967(2), F.S., requires the AHCA to establish minimum contract requirements.

that enrollment is sufficiently diverse to conduct a statistically valid evaluation of the pilot program within three years. The pilot program will be available, on a volunteer basis, to Medicaid eligible individuals who:

- Are 21 years of age or older;
- Have been assigned to category 3, 4, 5 or 6 on the iBudget waitlist; and
- Reside in a pilot program region.

Pilot Program Benefits

The plans participating in the pilot program must, at a minimum, provide the following services through a single, integrated model of care:

- Medical care benefits described in s. 409.973, F.S., including access to prepaid dental plans;
- Long-term care benefits described in s. 409.98, F.S.;
- Home and community-based services described in 393.066, F.S.; and
- Services currently listed in the Florida Medicaid Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook, and prevocational services.

Services must be provided in accordance with an individualized care plan that is evaluated and updated as warranted by changes in a participant's circumstances. Natural and community services and supports must be utilized prior utilization of state resources.

All service providers of home and community-based services under the pilot program must meet the same provider qualifications as service providers under the iBudget waiver. The iBudget waiver service provider qualifications are outlined in the Florida Medicaid Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook.³⁷

Plan Eligibility and Selection

For a plan to be selected to participate in the pilot program, the plan must have been awarded a contract as a result of the invitation to negotiate, ITN-04836, for Statewide Medicaid Managed Care Program which was issued on April 11, 2023. The AHCA must select one plan for each region of the pilot program.

The AHCA must select the plans, with which they will negotiate, based on specific criteria that must include, but is not limited to, the following:

- Experience serving similar populations and achieving specific quality standards.
- Establishment of provider partnerships that create opportunities for re-investment in community-based services;
- Provision of additional benefits including behavioral health services, coordinated dental care, and mental health therapy and analysis;
- Evidence of established relationships with providers;
- Experience in the provision of person-centered planning; and
- Experience in provider development program that result in increased availability of providers to serve individuals with developmental disabilities.

³⁷ See, Rule 59G-13.070, F.A.C.

The APD is required to be a part of the negotiating team. After negotiations are complete preference will be given to plans that:

- Have signed contracts in sufficient numbers to meet the access standards specified in s. 409.967, F.S., including contracts for personal supports, skilled nursing, residential habilitation, adult day training, mental health services, respite care, companion services, and supported employment;
- Have well-defined programs for recognizing patient-centered medical homes, and providing increased compensation to recognized medical homes;
- Have well-defined programs related to person-centered planning; and
- Have robust and innovative provider development programs.

Plan Accountability

Managed care plans participating in the pilot program must meet the accountability measures required by ss. 409.967, 409.975, and 409.982, F.S. The bill requires the AHCA to include the same accountability measures required of managed care plans, in its contract with participating plans that are selected to participate in the pilot program. These measures include, but are not limited to, the following:

- Participation in the achieved savings rebate program;³⁸
- Performance measures related to access, quality care, grievance resolution, prompt payment, and transparency, among others;³⁹
- Compliance with the AHCA's reporting requirements;⁴⁰
- Development and maintenance of adequate provider networks;⁴¹
- Establishment of provider quality and performance monitoring;⁴²
- Development of negotiated, mutually acceptable provider rates and terms of payment;⁴³ and
- Specific standards for the number, type, and distribution of providers in the plan's network, as developed by the AHCA.⁴⁴

In addition, the bill requires the plans must have provider capacity within a maximum travel distance of 15 miles for urban areas and 30 miles for rural areas, for the provision of specialized therapies, adult day training, and prevocational training.

Plans must consult with the APD prior to placing a pilot program participant in a facility licensed by the APD.

Plan Payment

The plans will receive an actuarially sound capitated per-member, per-month payment. The bill requires the rate-setting methodology used to develop the capitated rate to reflect the intent to provide individualized, quality care in the least-restrictive setting.

³⁸ The achieved savings rebate program requires plans to share savings with the state, and authorizes plans to retain statutorily-defined portions of savings, some increments of which are tied to achieving AHCA-defined quality measures. Section 409.967(3)(f), F.S.

³⁹ Section 409.967, F.S.

⁴⁰ Section 409.973(2)(e), F.S.

⁴¹ Section 409.975 (1), F.S.

The AHCA must include in the dental capitation-rate-setting methodology for the prepaid dental health program the inclusion of serving individuals with developmental disabilities.

Pilot Program Reporting and Evaluation

The bill requires the AHCA to evaluate the feasibility of statewide implementation of the capitated managed care model used by the pilot program.

Upon implementation of the pilot program, the bill authorizes the APD to conduct audits of the plan's implementation of person-centered planning and quality assurance monitoring. Quality assurance monitoring must include client satisfaction with services, health and safety outcomes, well-being outcomes, and service delivery in accordance with the client's care plan.

Additionally, the APD, in consultation with the AHCA, must submit the following reports:

- By December 31, 2023, a report on the progress made toward federal approval of the pilot program.
- By December 1, 2024, a report on the progress made toward full implementation of the pilot program.
- By December 1, 2025, and annually thereafter, a report on the operation of the pilot program, including, but not limited to, the following:
 - Program enrollment data;
 - Any complaints received; and
 - Access to approved services.
- By October 1, 2029, an evaluation of the pilot program, including, but not limited to, the following:
 - Specific measures of access, quality, and costs;
 - Assessments of cost savings;
 - Consumer education, choice, and access to services;
 - Plans for future capacity and the enrollment of new Medicaid providers;
 - Coordination of care;
 - Person-centered planning, and person-centered well-being outcomes;
 - Health and quality-of-life outcomes;
 - Quality of care; and
 - Any barriers to implementation and operation of the pilot program.

The evaluation required by the bill must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2029.

The pilot program is repealed on October 2, 2029, after the submission of the program evaluation, unless reviewed and saved from repeal by the Legislature.

The bill authorizes the APD to develop rules to establish a process to enroll pilot program participants onto the iBudget waiver upon the cessation of the pilot program.

⁴² Section 409.975(3), F.S.

⁴³ Section 409.975(6), F.S.

⁴⁴ Section 409.982(4)

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who enroll in the pilot will experience an increase in home and community-based services.

An organization awarded a contract under the pilot program will benefit financially from the bill's implementation, if that organization is able to successfully manage services rendered to program participants. The Agency for Health Care Administration (AHCA) has not provided an analysis of the bill; therefore, the number of managed care organizations, if any, who currently meet the bill's qualifications, or could potentially be created to meet those qualifications, is unknown.

C. Government Sector Impact:

The bill will have a significant negative fiscal impact on state expenditures. The pilot program limits participation to the maximum number of enrollees specified in the General Appropriations Act.

Currently, House Bill 5001, the House proposed General Appropriations Act for Fiscal Year 2023-2024, provides that AHCA may request budget authority associated with the enrollment of up to 600 individuals who are currently on the iBudget waiting list and who voluntarily choose to participate in the pilot program.

The Agency for Persons with Disabilities estimates the average annual cost for a non-crisis enrollee on the iBudget Waiver is \$53,136. Therefore, the estimated cost to provide home and community-based services to 600 individuals who are on the waitlist, and who are not in crisis, is \$31.8 million (\$12.9 million GR; \$18.9 million TF).⁴⁵

The bill will likely have an indeterminate yet negative fiscal impact on both the AHCA and the APD due to the responsibilities required of both agencies under the bill. However, the fiscal impact is likely to be realized in Fiscal Year 2024-2025 when contracts are awarded and implementation of the pilot program begins.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.981 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations Committee on Health and Human Services on April 18, 2023:

The committee substitute:

- Requires the AHCA to submit a request for federal approval to provide a managed care service delivery system for providing medical, long-term, home and community-based services to individuals with developmental disabilities, by September 1, 2023.
- Requires that the AHCA to delegate specific duties and responsibilities to the Agency for Persons with Disabilities (APD).
- Expands the pilot program from only Miami-Dade County, to Medicaid regions D and I, which include Hardee, Highlands, Hillsborough, Manatee, Polk, Miami-Dade and Monroe counties.
- Expands the list of services that must be provided to include all of the 27 services currently provided by the APD through the iBudget waiver.

⁴⁵ This estimate excludes medical costs provided to people with developmental disabilities currently covered by Medicaid.

- Requires that home and community-based service providers under the pilot program to meet the same provider qualifications currently required of providers under the iBudget waiver.
- Requires the maximization of natural and community supports prior to the utilization of state resources.
- Requires the APD to conduct an initial needs assessment to determine an individual's level of need.
- Specifies participant eligibility, to include individuals who are 21 years of age or older, who are currently in certain categories on the waitlist, and who reside in the pilot areas.
- Requires the APD to make pilot program enrollment offers, under certain circumstances and to a specified population, to ensure a statistically valid test of the pilot program can be conducted within 3 years.
- Expands the types of entities that may be awarded a contract to implement the pilot program to include any plan that is awarded a contract to provide long-term care services under the AHCA's Statewide Medicaid Managed Care invitation to negotiate, which was released on April 11, 2023. The underlying bill limited the type of plan that could be awarded a contract to only a provider service network.
- Requires the selected plans to meet additional criteria, including:
 - Provider capacity within a certain distance for the provision of certain services;
 - Experience serving similar populations and achieving specific quality standards;
 - Establishment of provider partnerships that create opportunities for re-investment in community-based services;
 - Provision of additional benefits including behavioral health services, coordinated dental care, and mental health therapies;
 - Evidence of established relationships with providers;
 - Experience in the provision of person-centered planning; and
 - Experience in provider development program that result in increased availability of providers to serve individuals with developmental disabilities.
- Authorizes the AHCA to give preference in awarding contracts to plans that meet the following additional criteria:
 - Have a sufficient amount of signed contracts for the provision of certain home and community-based services;
 - Have well-defined programs for recognizing patient-centered medical homes, such as those that serve people with intensive behaviors, and providing increased compensation to recognized medical homes;
 - Have well-defined programs related to person-centered planning; and
 - Have robust provider development programs.
- Authorizes the AHCA to pay selected plans a capitated per-member, per-month payment based on a new actuarially sound rate-setting methodology specific to providing developmentally disabled individuals with individualized, quality care in the least restrictive setting. The underlying bill was less specific only requiring that the plan be paid a risk-adjusted capitation rate.
- Requires the AHCA to include the inclusion of serving individuals with developmental disabilities in the dental-capitation-rate-setting methodology.

- Authorizes the APD to conduct audits of the plan's implementation of person-centered planning and quality assurance monitoring of the pilot program.
- Requires the APD to submit a report on progress made toward federal approval and implementation of the pilot program, by certain dates.
- Requires the APD to submit a report by December 31, 2025 and annually thereafter, on the operation of the pilot program.
- Requires the APD and the AHCA, to conduct an evaluation of the pilot program and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2029.
- Repeals the pilot program after October 2, 2029, unless reviewed and saved from repeal by the Legislature.
- Authorizes the APD to develop rules to establish a process to enroll pilot program participants onto the iBudget waiver upon the cessation of the pilot program.

B. Amendments:

None.



650886

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2023	.	
	.	
	.	
	.	

The Appropriations Committee on Health and Human Services
(Trumbull and Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 409.9855, Florida Statutes, is created
to read:

409.9855 Pilot program for individuals with developmental
disabilities.—

(1) PILOT PROGRAM IMPLEMENTATION.—

(a) Using a managed care model, the agency shall implement



650886

a pilot program for individuals with developmental disabilities in Statewide Medicaid Managed Care Regions D and I to provide coverage of comprehensive services, including community-based services described in s. 393.066(3) and services currently included in the state's federally approved home and community-based services Medicaid waiver program for individuals with developmental disabilities.

(b) The agency may seek federal approval through an experimental, pilot, or demonstration project state plan amendment or Medicaid waiver as necessary to implement the pilot program, which is intended to provide an additional service delivery system for individuals with developmental disabilities in the state Medicaid program using an integrated-care management model designed to serve Medicaid recipients in the community. The agency shall submit a request for any federal approval needed to implement the pilot program by September 1, 2023.

(c) Pursuant to s. 409.963, the agency shall administer the pilot program, but shall delegate specific duties and responsibilities for the pilot program to the Agency for Persons with Disabilities. At a minimum, the Agency for Persons with Disabilities shall perform the duties specified in this section and in chapter 393 as they relate to individuals being served by the community-based services Medicaid waiver program.

(d) The agency shall make payments for comprehensive services, including community-based services described in s. 393.066(3) and approved through the state's home and community-based services Medicaid waiver program for individuals with developmental disabilities, using a managed care model. Unless



650886

otherwise specified, ss. 409.961-409.969 apply to the pilot program.

(e) The agency shall evaluate the feasibility of statewide implementation of the capitated managed care model used by the pilot program to serve individuals with developmental disabilities.

(2) ELIGIBILITY; VOLUNTARY ENROLLMENT.—

(a) Participation in the pilot program is voluntary and limited to the maximum number of enrollees specified in the General Appropriations Act. Eligibility for the pilot program does not automatically entitle individuals to any other services under chapter 393.

(b) The Agency for Persons with Disabilities shall conduct a needs assessment to determine functional, behavioral, and physical needs of prospective enrollees. Medicaid recipients identified as meeting all of the following criteria may receive offers of enrollment into the pilot program:

1. Are 21 years of age or older and are on the waiting list for iBudget waiver services under chapter 393;

2. Have been assigned to category 3, category 4, category 5, or category 6 as specified in s. 393.065(5); and

3. Reside in a pilot program region.

(c) Notwithstanding any provisions of s. 393.065 to the contrary and subject to the availability of funds, the Agency for Persons with Disabilities shall make offers for enrollment to eligible individuals. Before making enrollment offers, the agency and the Agency for Persons with Disabilities shall determine that sufficient funds exist to support additional enrollment into plans. The Agency for Persons with Disabilities



650886

shall ensure that a statistically valid population is sampled to participate in the pilot program. The agency shall make enrollment offers and use clinical eligibility criteria that ensure that pilot program sites have sufficient diversity of enrollment to conduct a statistically valid test of the managed care pilot program within a 3-year timeframe.

(d) Notwithstanding any provisions of s. 393.065 to the contrary, upon the cessation of the pilot program, individuals enrolled in the pilot program must be afforded an opportunity to enroll in any appropriate existing Medicaid waiver program. The Agency for Persons with Disabilities shall develop rules to implement this subsection.

(3) PILOT PROGRAM BENEFITS.—

(a) Plans participating in the pilot program must, at a minimum, cover the following:

1. All benefits included in s. 409.973.

2. All benefits included in s. 409.98.

3. All benefits included in s. 393.066(3), and all of the following:

a. Adult day training.

b. Behavior analysis services.

c. Behavior assistant services.

d. Companion services.

e. Consumable medical supplies.

f. Dietitian services.

g. Durable medical equipment and supplies.

h. Environmental accessibility adaptations.

i. Occupational therapy.

j. Personal emergency response systems.



650886

98 k. Personal supports.
99 l. Physical therapy.
100 m. Prevocational services.
101 n. Private duty nursing.
102 o. Residential habilitation, including the following
103 levels:
104 (I) Standard level.
105 (II) Behavior-focused level.
106 (III) Intensive-behavior level.
107 (IV) Enhanced intensive-behavior level.
108 p. Residential nursing services.
109 q. Respiratory therapy.
110 r. Respite care.
111 s. Skilled nursing.
112 t. Specialized medical home care.
113 u. Specialized mental health counseling.
114 v. Speech therapy.
115 w. Support coordination.
116 x. Supported employment.
117 y. Supported living coaching.
118 z. Transportation.
119 (b) All providers of the services listed under paragraph
120 (a) must meet the provider qualifications outlined in the
121 Florida Medicaid Developmental Disabilities Individual Budgeting
122 Waiver Services Coverage and Limitations Handbook as adopted by
123 reference in rule 59G-13.070, Florida Administrative Code.
124 (c) Support coordination services must maximize the use of
125 natural supports and community services before using state
126 resources.



650886

(d) The plans participating in the pilot program must provide all categories of benefits through a single, integrated model of care.

(e) Services must be provided to enrollees in accordance with an individualized care plan in conjunction with the Agency for Persons with Disabilities which is evaluated and updated at least quarterly and as warranted by changes in an enrollee's circumstances.

(4) ELIGIBLE PLANS; PLAN SELECTION.—

(a) To be eligible to participate in the pilot program, a plan must have been awarded a contract to provide long-term care services pursuant to s. 409.966 as a result of an invitation to negotiate.

(b) The agency shall select, as provided in s. 287.057(1), one plan to participate in the pilot program for each of the two regions. The director of the Agency for Persons with Disabilities or his or her designee must be a member of the negotiating team.

1. The invitation to negotiate must specify the criteria and the relative weight assigned to each criterion that will be used for determining the acceptability of submitted responses and guiding the selection of the plans with which the agency and the Agency for Persons with Disabilities negotiate. In addition to any other criteria established by the agency and the Agency for Persons with Disabilities, the agencies shall consider the following factors in the selection of eligible plans:

a. Experience serving similar populations, including the plan's record in achieving specific quality standards with similar populations.



650886

b. Establishment of community partnerships with providers which create opportunities for reinvestment in community-based services.

c. Provision of additional benefits, particularly behavioral health services, the coordination of dental care, and other initiatives that improve overall well-being.

d. Provision of and capacity to provide mental health therapies and analysis designed to meet the needs of individuals with developmental disabilities.

e. Evidence that an eligible plan has written agreements or signed contracts or has made substantial progress in establishing relationships with providers before submitting its response.

f. Experience in the provision of person-centered planning as described in 42 C.F.R. s. 441.301(c)(1).

g. Experience in robust provider development programs that result in increased availability of Medicaid providers to serve the developmental disabilities community.

2. After negotiations are conducted, the agency shall select the eligible plans that are determined to be responsive and provide the best value to the state. Preference must be given to plans that:

a. Have signed contracts in sufficient numbers to meet the specific standards established under s. 409.967(2)(c), including contracts for personal supports, skilled nursing, residential habilitation, adult day training, mental health services, respite care, companion services, and supported employment, as those services are defined in the Florida Medicaid Developmental Disabilities Individual Budgeting Waiver Services Coverage and



650886

Limitations Handbook as adopted by reference in rule 59G-13.070,
Florida Administrative Code.

b. Have well-defined programs for recognizing patient-
centered medical homes and providing increased compensation to
recognized medical homes, as defined by the plan.

c. Have well-defined programs related to person-centered
planning as described in 42 C.F.R. s. 441.301(c)(1).

d. Have robust and innovative programs for provider
development and collaboration with the Agency for Persons with
Disabilities.

(5) CAPITATED PAYMENT.—

(a) The selected plans shall receive capitated per-member,
per-month payments based on a rate-setting methodology developed
specifically for the unique needs of the developmentally
disabled population.

(b) The agency, in coordination with the Agency for Persons
with Disabilities, must ensure that the capitation-rate-setting
methodology for the integrated system is actuarially sound and
reflects the intent to provide individualized, quality care in
the least-restrictive setting.

(c) The agency must include in the dental capitation-rate-
setting methodology for the prepaid dental health program
established pursuant to s. 409.973(5) the inclusion of serving
individuals in this population.

(d) The selected plan must comply with s. 409.967(3).

(6) PROGRAM IMPLEMENTATION AND EVALUATION.—

(a) Full implementation of the pilot program shall occur
concurrent to the contracts awarded, pursuant to s. 409.966, for
the provision of managed medical assistance and long-term care



650886

services.

(b) Upon implementation of the program, the Agency for Persons with Disabilities shall conduct audits of the selected plans' implementation of person-centered planning.

(c) The Agency for Persons with Disabilities shall, in consultation with the agency, submit progress reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives upon the federal approval, implementation, and operation of the pilot program, as follows:

1. By December 31, 2023, a status report on progress made toward federal approval of the waiver or waiver amendment needed to implement the pilot program.

2. By December 31, 2024, a status report on progress made toward full implementation of the pilot program.

3. By December 31, 2025, and annually thereafter, a status report on the operation of the pilot program, including, but not limited to, all of the following:

a. Program enrollment, including the number and demographics of enrollees, statistically reflecting the diversity of enrollees.

b. Any complaints received.

c. Access to approved services.

(d) The Agency for Persons with Disabilities shall, in consultation with the agency, conduct an evaluation of specific measures of access, quality, and costs of the pilot program. The Agency for Persons with Disabilities may contract with an independent evaluator to conduct such evaluation. The evaluation must include assessments of cost savings; consumer education, choice, and access to services; plans for future capacity and



650886

the enrollment of new Medicaid providers; coordination of care;
person-centered planning and person-centered well-being
outcomes; health and quality-of-life outcomes; and quality of
care by each eligibility category and managed care plan in each
pilot program site. The evaluation must describe any
administrative or legal barriers to the implementation and
operation of the pilot program in each region.

1. The Agency for Persons with Disabilities shall conduct
quality assurance monitoring of the pilot program to include
client satisfaction with services, client health and safety
outcomes, client well-being outcomes, and service delivery in
accordance with the client's care plan.

2. The Agency for Persons with Disabilities and the agency
shall submit the results of the evaluation to the Governor, the
President of the Senate, and the Speaker of the House of
Representatives by October 1, 2029.

(7) MANAGED CARE PLAN ACCOUNTABILITY.—

(a) In addition to the requirements of ss. 409.967,
409.975, and 409.982, plans participating in the pilot program
must have provider capacity within a maximum travel distance for
clients to services for specialized therapies, adult day
training, and prevocational training, for clients, as follows:

1. For urban areas, 15 miles travel distance for clients;
and

2. For rural areas, 30 miles travel distance for clients.

(b) Plans participating in the pilot program must consult
with the Agency for Persons with Disabilities before placing an
enrollee of the pilot program in a facility licensed by the
Agency for Persons with Disabilities.



650886

(8) REPEAL.—This section shall be repealed on October 2, 2029, after submission of the evaluation pursuant to paragraph (6) (d), unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Section 409.961, Florida Statutes, is amended to read:

409.961 Statutory construction; applicability; rules.—It is the intent of the Legislature that if any conflict exists between the provisions contained in this part and in other parts of this chapter, the provisions in this part control. Sections 409.961-9855 ~~409.961-409.985~~ apply only to the Medicaid managed medical assistance program, the and long-term care managed care program, and the pilot program for individuals with developmental disabilities, as provided in this part. The agency shall adopt any rules necessary to comply with or administer this part and all rules necessary to comply with federal requirements. In addition, the department shall adopt and accept the transfer of any rules necessary to carry out the department's responsibilities for receiving and processing Medicaid applications and determining Medicaid eligibility and for ensuring compliance with and administering this part, as those rules relate to the department's responsibilities, and any other provisions related to the department's responsibility for the determination of Medicaid eligibility. Contracts with the agency and a person or entity, including Medicaid providers and managed care plans, necessary to administer the Medicaid program are not rules and are not subject to chapter 120.

Section 3. (1) For a plan to be selected to participate in the pilot program for individuals with developmental



650886

disabilities pursuant to s. 409.9855, Florida Statutes, as
created by this act, the plan must have been awarded a contract
as a result of the invitation to negotiate, ITN-04836, for
Statewide Medicaid Managed Care Program which was issued on
April 11, 2023.

(2) The pilot program for individuals with developmental
disabilities pursuant to s. 409.9855, Florida Statutes, as
created by this act, shall be implemented in Statewide Medicaid
Managed Care Regions D and I, as established by chapter 2022-42,
Laws of Florida.

Section 4. This act shall take effect upon becoming a law.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the pilot program for individuals
with developmental disabilities; creating s. 409.9855,
F.S.; requiring the Agency for Health Care
Administration to implement a pilot program for
individuals with developmental disabilities in
specified Statewide Medicaid Managed Care regions to
provide coverage of comprehensive services;
authorizing the agency to seek any federal approval
needed to implement the program; requiring the agency
to submit such request by a specified date; requiring
the agency to administer the pilot program but
delegate specified duties to the Agency for Persons



650886

with Disabilities; requiring the Agency for Health
Care Administration to make payments for comprehensive
services under the pilot program using a managed care
model; providing applicability; requiring the Agency
for Health Care Administration to evaluate the
feasibility of implementing the pilot program
statewide; providing that participation in the pilot
program is voluntary and subject to specific
appropriation; providing construction; requiring the
Agency for Persons with Disabilities to conduct needs
assessments of prospective enrollees; providing
enrollment eligibility requirements; requiring the
Agency for Persons with Disabilities to make offers
for enrollment to eligible individuals within
specified parameters; requiring that individuals
enrolled in the pilot program be afforded an
opportunity to enroll in any appropriate existing
Medicaid waiver program upon cessation of the pilot
program; requiring the Agency for Persons with
Disabilities to adopt rules; requiring participating
plans to cover specified benefits; providing
additional requirements for the provision of benefits
by participating plans under the pilot program;
providing eligibility requirements for plans;
providing a selection process; requiring the agency to
give preference to certain plans; requiring capitated
payments based on a specified methodology; requiring
that the agencies ensure that the methodology be
actuarially sound and reflect specified intent;



650886

requiring that the selected plan comply with specified provisions; providing that implementation of the program shall occur concurrently with other specified services; requiring the Agency for Persons with Disabilities to conduct certain audits of the selected plans and, in consultation with the agency, to submit specified progress reports to the Governor and the Legislature by specified dates throughout the program approval and implementation process; providing requirements for the respective reports; requiring the Agency for Persons with Disabilities, in consultation with the Agency for Health Care Administration, to conduct an evaluation of the pilot program; authorizing the Agency for Persons with Disabilities to contract with an independent evaluator to conduct such evaluation; providing requirements for the evaluation; requiring the Agency for Persons with Disabilities to conduct quality assurance monitoring of the pilot program; requiring the agencies to submit the results of the evaluation to the Governor and the Legislature by a specified date; requiring participating plans to maintain specified provider capacity limits; requiring participating plans to consult with the Agency for Persons with Disabilities before placing a pilot program enrollee in certain facilities; providing for the future repeal of the pilot program; amending s. 409.961, F.S.; conforming a provision to changes made by the act; requiring that plans selected to participate in the pilot program be



650886

plans awarded a contract as a result of a specified invitation to negotiate; requiring that the pilot program be implemented in specified Statewide Medicaid Managed Care regions; providing an effective date.

WHEREAS, the mission of the Agency for Persons with Disabilities is developing community-based programs and services for individuals with developmental disabilities and working with private businesses, not-for-profit corporations, units of local government, and other organizations capable of providing needed services to clients to promote their living, learning, and working as part of their communities, and

WHEREAS, the Agency for Persons with Disabilities advances that mission through the iBudget waiver, which is designed to promote and maintain the health of eligible individuals with developmental disabilities, to provide medically necessary supports and services to delay or prevent institutionalization, and to foster the principles and appreciation of self-determination, and

WHEREAS, the Legislature intends for a comprehensive and coordinated service delivery system for individuals with developmental disabilities which includes all services specified in ss. 393.066(3), 409.973, and 409.98, Florida Statutes, and the state's home and community-based services Medicaid waiver program, and

WHEREAS, the Legislature further intends that such service delivery system ensure consumer education and choice, including choice of provider, location of living setting, location of services, and scheduling of services and supports; access to



650886

care coordination services; local access to medically necessary services; coordination of preventative, acute, and long-term care and home and community-based services; reduction in unnecessary service utilization; provision of habilitative and rehabilitative services; and adherence to person-centered planning as described in 42 C.F.R. s. 441.301(c)(1), and

WHEREAS, Florida continues to look for multiple innovative pathways to serve individuals with developmental disabilities and their families, including expanding the continuum of care to provide a robust and stable system that is a reliable provider of services for individuals with developmental disabilities to promote a comprehensive state of thriving in daily living, community integration, and goal-based achievement, NOW, THEREFORE,

By Senator Trumbull

2-01342A-23

20231084

A bill to be entitled

An act relating to the long-term managed care program; amending s. 409.981, F.S.; requiring the Agency for Health Care Administration to select, through a specified procurement process, a qualified long-term care plan to implement a pilot program in Miami-Dade County to provide coverage of comprehensive services for Medicaid recipients who have developmental disabilities; providing requirements for the pilot program and the selected qualified plan; requiring the agency to contract for an independent evaluation of the performance of the plan; providing requirements for the evaluation; requiring the agency to submit the results of the evaluation to the Legislature by a specified date; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) is added to section 409.981, Florida Statutes, to read:

409.981 Eligible long-term care plans.—

(6) INTEGRATED PLAN FOR PERSONS WITH DEVELOPMENTAL DISABILITIES.—The agency shall select, pursuant to s. 287.057(1)(c), a single qualified plan to implement a pilot program in Miami-Dade County which provides coverage of comprehensive services for Medicaid recipients as defined in s. 409.962 who have a developmental disability as defined in s. 393.063.

(a) Comprehensive coverage includes benefits described in

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2-01342A-23

20231084

s. 409.973, community-based services described in s. 393.066(3), and long-term care plan benefits described in s. 409.98.

(b) Participation in the pilot program is voluntary and limited to the maximum number of enrollees specified in the General Appropriations Act. Potential participants will be selected from individuals on the waitlist for iBudget waiver services.

(c) The selected plan shall be paid a risk-adjusted capitation rate.

(d) A qualified plan must be a provider service network as defined in s. 409.962, the owners of which include licensed health care providers with experience serving iBudget clients.

(e) The selected plan must provide all categories of benefits through a single, integrated model of care.

(f) The selected plan must document revenues and expenditures related to the pilot program and submit periodic financial reports to the agency. Pretax income may be subject to the income sharing ratios established in s. 409.967(3)(f).

(g) Services must be provided to enrollees in accordance with an individualized care plan that is evaluated and updated at least quarterly or as warranted by changes in an enrollee's circumstances.

(h) The agency shall contract for an independent evaluation of the performance of the integrated plan based on specific measures of access, quality, and cost. The agency shall submit the results of the evaluation to the President of the Senate and the Speaker of the House of Representatives by October 1, 2024.

Section 2. This act shall take effect upon becoming a law.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Appropriations Committee on Transportation, Tourism,
and Economic Development, *Vice Chair*
Appropriations Committee on Agriculture, Environment,
and General Government
Banking and Insurance
Fiscal Policy
Judiciary
Transportation

SELECT COMMITTEE:

Select Committee on Resiliency

SENATOR JAY TRUMBULL

2nd District

April 4, 2023

Re: SB 1084

Dear Chair Harrell,

I am respectfully requesting Senate Bill 1084, related to Long-term Managed Care Program, be placed on the agenda for the next Appropriations Committee on Health and Human Services.

I appreciate your consideration of this bill. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

A handwritten signature in black ink, appearing to be "J. Trumbull", written in a cursive style.

Senator Jay Trumbull
District 2

REPLY TO:

- ☐ 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
- ☐ 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate
APPEARANCE RECORD

Tab 6

SB 1084

Bill Number or Topic

650886

Amendment Barcode (if applicable)

Meeting Date

4-18-23

Committee

Healthcare Approp. Subcomm

Deliver both copies of this form to
Senate professional staff conducting the meeting

Name

Ryan Chandler

Phone

904-477-4750

Address

2176 Herschel St

Street

Email

chandler.support@services@gmail.com

Jacksonville FL

City

State

32204

Zip

Speaking: ☐ For ☐ Against ☒ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

Support Coordinator
Association

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/18/23
Meeting Date

HHS
Committee

Tab 6 1084
Bill Number or Topic

650886
Amendment Barcode (if applicable)

Name Olivia Babis Phone 850-617-9718

Address 2473 Care Dr. Ste 200 Email oliviab@drflorida.org
Street

Tallahassee FL 32308
City State Zip

Speaking: ☐ For ☐ Against ☒ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Disability Rights
FL

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/18/23

Meeting Date

Approps

Committee

1084 Table

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Anay Abraham

Phone

786 422 4676

Address

1550 Douglas Rd #280

Street

Email

Coral Gables FL 33134

City

State

Zip

Speaking:

☒ For

☐ Against

☐ Information

OR

Waive Speaking:

☒ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. 511.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Amendment Barcode (if applicable)

Meeting Date

Committee

Name

Phone

Address

Email

Street

City

State

Zip

Speaking:

☐ For

☒ Against

☐ Information

OR

Waive Speaking:

☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



☒ I am appearing without
compensation or sponsorship.



☐ I am a registered lobbyist,
representing:



☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/18/23

Meeting Date

1084

Bill Number or Topic

Tab 6

H

Committee

Name

ALISON HORNES

Phone

407-405-2210

Address

1620 RIDGE AV

Email

ahornes@abroadajohno

Street

LONGWOOD

State

FL

Zip

32750

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1, [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

5-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

BILL: CS/CS/SB 1338

INTRODUCER: Appropriations Committee on Health and Human Services; Health Policy Committee;
and Senator Martin

SUBJECT: Massage Establishments

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van Winkle	Brown	HP	Fav/CS
2.	Howard	Money	AHS	Fav/CS
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1338 amends section 456.074, Florida Statutes, to authorize the Department of Health (department) to issue an emergency suspension order (ESO) to suspend the license of massage therapists (MTs) and massage establishments (MEs) if the MT or certain individuals connected to the ME are arrested for committing, attempting, soliciting, conspiring, or convicted or found guilty of, or enter criminal pleas to, specified violations in the ME.

The bill amends the massage therapy and ME practice act to redefine the term “designated establishment owner” and to create new definitions for “advertising media,” “employee,” and “sexual activity.” The bill permits code enforcement officers and law enforcement officers to inspect MEs for violations and to submit affidavits to the department with photos and documentation under certain circumstances within certain time frames, which then requires the department to inspect the ME within a certain time frame for specified violations and to initiate disciplinary proceedings if violations are discovered. If a law enforcement officer arrests a MT for violations of chapter 480, Florida Statutes, or finds that a ME is operating in violation of an ESO or an emergency restriction order (RO), the law enforcement agency must notify the department within five business days.

The bill creates new requirements and prohibitions for MEs. The bill amends the definition of an unlicensed ME for purposes of crimes to include employees or attendants who are licensed MTs.

The bill requires the Board of Massage Therapy (BMT) to adopt rules governing the operation of MEs and their facilities, employees, safety and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process.

The bill is estimated to have a significant negative fiscal impact on the department requiring eight additional positions and \$876,703 in trust funded budget authority. The bill appropriates eight full-time equivalent positions and the associated salary rate and budget to the Department of Health for the implementation of this bill (See Section V. of this analysis).

The bill takes effect on July 1, 2023.

II. Present Situation:

Massage Establishments

The Board of Massage Therapy (BMT), in conjunction with the Department of Health (department), regulates the practice of massage therapy and Massage Establishments (MEs) pursuant to ch. 480, F.S.

Board of Massage Therapy

The BMT consists of seven members, who are appointed by the Governor, and confirmed by the Senate, for four year terms. Five members of the BMT must be licensed Massage Therapists (MTs) and have been engaged in the practice of MT at least five consecutive years prior to their appointment. Two members must be laypersons. Each BMT member must be a U.S. citizen, a Florida resident for at least five years, and a high school graduate or have a high school equivalency diploma (GED). The BMT must meeting at least once during the year for an annual meeting, and as necessary thereafter. A quorum for the BMT requires at least four BMT members. The BMT has authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of ch. 480, F.S.¹

Definitions Relevant to Massage Establishments

A “massage establishment (ME)” is a site or premises, wherein a MT practices massage therapy.²

A message “establishment owner” is a person who has an ownership interest in a ME. The term includes an individual who holds a ME license, a general partner of a partnership, an owner or officer of a corporation, and a member of a limited liability company and its subsidiaries who holds a ME license.³

A “designated establishment manager” is a MT who holds a clear and active, unrestricted massage therapy license, and who is responsible for the operation of a ME, and designated as the manager of the practices at the ME.⁴

¹ Section 480.035, F.S.

² Section 480.033(7), F.S.

³ Section 480.033(8), F.S.

⁴ Section 480.033(6), F.S.

A massage “ownership entity” is an entity to whom a ME license is issued and may be a sole proprietor, a partnership, a limited liability company, or another entity formed under the law of the jurisdiction in which the entity resides.⁵

For purposes of the crimes of obscenity, under ch. 847, F.S., an “adult entertainment establishment” is, among other things, an “unlicensed massage establishment” which is any business or enterprise that offers, sells, or provides, or that holds itself out as offering, selling, or providing, massages that include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees or attendants, by hand or by any electrical or mechanical device, on or off the premises. The term “unlicensed massage establishment” does not include a ME licensed under s. 480.043, F.S., which routinely provides medical services by licensed health care practitioners and MTs licensed under s. 480.041, F.S.⁶

Licensure of Massage Establishments

Each ME must obtain a license from the department by submitting a department form and a fee set by the BMT, along with proof of property damage and bodily injury liability insurance for the proposed ME.⁷ A ME license may not be issued until the ME passes a department inspection which demonstrates that the proposed ME is to be used for “massage” and that the proposed ME is in compliance with the requirements of chs. 456 and 480, F.S., and the rules of the BMT.⁸

A ME owner must undergo a Federal Bureau of Investigations (FBI) background screening, which includes electronically submitting finger prints to the Florida Department of Law Enforcement (FDLE).⁹ If a corporation submits proof of having more than \$250,000 in business assets in Florida, the department must require the ME owner, the designated ME manager, and each individual directly involved in the management of the ME to comply with the background screening requirements.¹⁰ The department must provide all investigative services required in carrying out the provisions of ch. 480, F.S.¹¹

Massage Establishment Operations

The Legislature requires the BMT to adopt rules to govern the operation of MEs and their facilities, personnel, safety and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process.¹²

Florida Administrative Code Rule 64B7-26.003(2022), requires each ME to:

- Carry current property damage and bodily injury liability insurance, and a copy of the policy must be kept at the ME;

⁵ Fla. Admin. Code R. 64B7-26.001(2022).

⁶ Section 847.001(2)(d), F.S.

⁷ Section 480.043(1), F.S.; Fla. Admin. Code R. 64B7-26.002(2022).

⁸ Section 480.043, F.S.

⁹ See 456.0135, F.S. for general background screen details.

¹⁰ Section 480.043(2), F.S.

¹¹ Section 480.039, F.S.

¹² Section 480.043(3), F.S.

- Comply with all municipal building and zoning requirements;
- Maintain all equipment used to administer massage therapy treatment in a safe and sanitary condition;
- Conspicuously display the current ME license in the ME in open public view;
- Conspicuously display, in open public view, the license or a photocopy, of each MT practicing in the ME;
- Conspicuously display the required human trafficking signage in compliance with ss. 456.0341(3) and 480.043(13), F.S., which requires a sign at least 11 inches by 15 inches, printed in a clearly legible font and in at least a 32-point type, which substantially states in English and Spanish the following:

“If you or someone you know is being forced to engage in an activity and cannot leave, whether it is prostitution, housework, farm work, factory work, retail work, restaurant work, or any other activity, call the National Human Trafficking Resource Center at 888-373-7888 or text INFO or HELP to 233-733 to access help and services. Victims of slavery and human trafficking are protected under United States and Florida law.”

- Have a procedure for reporting suspected human trafficking to the National Human Trafficking Hotline or to a local law enforcement agency and have a sign posted in a conspicuous place which is accessible to employees with the relevant reporting procedures posted.¹³

A massage establishment must provide restroom facilities that include:¹⁴

- One functioning toilet and one sink with running water;
- Toilet tissue;
- Soap dispenser with soap or other hand sanitizing agent;
- Sanitary towels for hand drying, or other hand drying device, such as a wall-mounted electric blow dryer; and
- One waste receptacle; or
- A centralized restroom facility within 300 feet of the ME for MTs who reside in buildings that are so equipped.

There are additional requirements for ME with whirlpool baths, sauna, steam cabinet or steam room, (including wet, dry and infrared), which include shower facilities with further specification. Lavatory facilities are required within 20 feet of each treatment room and must include either:

- A sink with running water, soap dispenser with soap, and sanitary towels for hand drying or another hand drying device, such as a wall-mounted electric blow dryer; or
- Hand sanitizer or another chemical germicidal designed to disinfect without the use of running water.¹⁵

¹³ See ss. 456.0341(3) and 480.043(13), F.S.

¹⁴ Fla. Admin. Code R. 64B7-26.003(2) (2022).

¹⁵ Id.

Massage establishment facilities must be kept in good repair, be well-lit and properly ventilated. Each ME must:¹⁶

- Maintain a fire extinguisher on premises;
- Provide for safe storage and removal of flammable materials;
- Provide for the removal of refuse; and
- Provide pest control.

Massage establishment required equipment and supplies includes:¹⁷

- Massage table(s) made of, or covered by, a non-porous, non-absorbent material that is free from rips or tears;
- Disinfect;
- Massage table coverings for each patient; and
- Sufficient quantity of sheets, towels, or clean drapes for each patient.

For massage establishments where massage therapists perform colonic irrigation, the ME must:¹⁸

- Maintain colonic irrigation equipment in safe and sanitary condition; and
- Maintain sterilization equipment if non-disposable colonic attachments are used.

Massage Establishment Advertising

Section 480.0465, F.S., and Florida Administrative Code Rule 64B7-33.001 (2022), require that all MEs advertising in a newspaper, on the airways, in telephone directory listings other than an in a column listing consisting of only a name, address, and telephone number, computer transmission, business card, handbill, flyer, or sign, or other advertising medium, must include:

- The license number of each licensed MT and each licensed ME whose name appears in the advertisement, though the license number of a licensed MT who is an owner or principal officer may be used in lieu of the ME's license number; and
- Pending licensure of a new ME, the license number of a licensed MT who is an owner or principal officer of the ME may be used in lieu of the license number for the ME.

Documents Required While Working in a Massage Establishment

A person employed by a ME, and any person performing massage therapy in an ME, must have with them while in the ME a valid government identification (ID). A valid government ID includes:

- A valid, unexpired U.S. driver license;
- A valid, unexpired U.S. ID card;
- A valid, unexpired U.S. passport;
- A naturalization certificate issued by the U.S. Department of Homeland Security (DHS);
- A valid, unexpired alien registration receipt card (green card); or
- A valid, unexpired employment authorization card issued by the U.S. DHS.¹⁹

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Section 480.0535, F.S.

A person operating a ME must:

- Immediately present, upon the request of a department investigator or a law enforcement officer:
 - A valid government identification while in the ME; and
 - A copy of a U.S. driver's license for each employee and any person performing massage therapy in the ME; and
- Ensure that each employee and any person performing massage therapy in the ME is able to immediately present, upon the request of a department investigator or law enforcement officer, a valid government ID while in the ME.²⁰

A person who violates the work documents requirement in s. 480.0535, F.S., commits:

- A misdemeanor of the second degree for a first violation, punishable as provided in s. 775.082 or s. 775.083;
- A misdemeanor of the first degree for a second violation, punishable as provided in s. 775.082 or s. 775.083; or
- A felony of the third degree for a third or any subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.²¹

Prohibited Practices in a Massage Establishment

A person may not operate a ME between the hours of midnight and 5:00 a.m.; unless the ME is:

- Located on the premises of a health care facility;²²
- A health care clinic;²³
- A hotel, motel, or bed and breakfast inn;²⁴
- A time share property;²⁵

²⁰ Id.

²¹ Id.

²² Section 408.07, F.S., defines a “health care facility” as an ambulatory surgical center, a hospice, a nursing home, a hospital, a diagnostic-imaging center, a freestanding or hospital-based therapy center, a clinical laboratory, a home health agency, a cardiac catheterization laboratory, a medical equipment supplier, an alcohol or chemical dependency treatment center, a physical rehabilitation center, a lithotripsy center, an ambulatory care center, a birth center, or a nursing home component licensed under ch. 400, F.S., within a continuing care facility licensed under ch. 651, F.S.

²³ Section 400.9905(4), F.S., defines “health care clinic” as an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider.

²⁴ Section 509.242, F.S., defines: 1) a “hotel” as any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry; 2) a “motel” as a public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, off street parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry; or 3) a bed and breakfast inn as a family home structure, with no more than 15 sleeping rooms, which has been modified to serve as a transient public lodging establishment, which provides the accommodation and meal services generally offered by a bed and breakfast inn, and which is recognized as a bed and breakfast inn in the community in which it is situated or by the hospitality industry.

²⁵ Section 721.05(40), F.S., defines a “time share property” as one or more timeshare units subject to the same timeshare instrument, together with any other property or rights to property appurtenant to those timeshare units. Notwithstanding anything to the contrary contained in chs. 718 or 719, F.S., the timeshare instrument for a timeshare condominium or cooperative may designate personal property, contractual rights, affiliation agreements of component sites of vacation clubs, exchange companies, or reservation systems, or any other agreements or personal property, as common elements or limited common elements of the timeshare condominium or cooperative.

- A public airport;²⁶
- A pari-mutuel facility;²⁷
- The MT is acting under the prescription of an allopathic or osteopathic physician, chiropractic physician, a podiatric physician an advanced practice registered nurse (APRN), physician assistant, or dentist; or
- The ME is operating during a special event if the county or municipality in which the ME operates has approved such operation during the special event.²⁸

A person operating a ME may not use or permit the ME to be used as a principal domicile unless the ME is zoned for residential use under a local ordinance.²⁹

A person who violates the provisions s. 480.0475, F.S., commits:

- A misdemeanor of the first degree, for a first violation, punishable as provided in s. 775.082 or s. 775.083; or
- A felony of the third degree for a second or subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Sexual misconduct in the practice of massage therapy is prohibited.³⁰

Emergency Suspension Orders and Restrictive Orders

Emergency Suspension Orders (ESOs) and Emergency Restriction Orders (EROs) are exclusively issued by the department and State Surgeon General. The State Surgeon General can either accept or disregard the preceding investigation based on recommendation made by Prosecution Services Unit attorneys. The emergency action process is applicable to any licensed Florida health care professional who poses an immediate and serious danger to the public health, safety or welfare.³¹

Section 456.074(4), F.S., authorizes the department, State Surgeon General, to issue an ESO suspending the license of a massage therapist or a ME upon receipt of information that the massage therapist, a person with an ownership interest in the ME, or, the owner, officer, or individual of a corporation that has more than \$250,000 of business assets in this state, that is directly involved in the management of the ME that has been convicted or found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, to owning, establishing, maintaining, or operating a ME in any place, structure, building, or conveyance for the purpose

²⁶ Section 330.27, F.S., defines an “airport” as an area of land or water used for, or intended to be used for, landing and takeoff of aircraft, including appurtenant areas, buildings, facilities, or rights-of-way necessary to facilitate such use or intended use; and a “public airport” as an airport, publicly or privately owned, which is open for use by the public.

²⁷ Section 550.002, F.S., defines “pari-mutuel facility” as the grounds or property of a cardroom, racetrack, fronton, or other facility used by a licensed permit holder.

²⁸ Section 480.0475, F.S.

²⁹ Id.

³⁰ Section 480.0485, F.S.

³¹ Department of Health, *A Quick Guide to the MQA Disciplinary Process Discretionary Emergency Orders – 3 Things to Know*, available at <https://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/documents/a-quick-guide-to-the-mqa-disciplinary-process-discretionary-emergency-orders.pdf> (last visited Apr. 4, 2023).

of lewdness, assignation, or prostitution³² or a felony offense under any of the following provisions or a similar provision in another jurisdiction:³³

- Section 787.01, F.S., relating to kidnapping;
- Section 787.02, F.S., relating to false imprisonment;
- Section 787.025, F.S., relating to luring or enticing a child;
- Section 787.06, F.S., relating to human trafficking;
- Section 787.07, F.S., relating to human smuggling;
- Section 794.011, F.S., relating to sexual battery;
- Section 794.08, F.S., relating to female genital mutilation;
- Former s. 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- Former s. 796.035, F.S., relating to the selling or buying of minors into prostitution;
- Section 796.04, F.S., relating to forcing, compelling, or coercing another to become a prostitute;
- Section 796.05, F.S., relating to deriving support from the proceeds of prostitution;
- Section 796.07(4)(a)3., F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts;
- Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 825.1025(2)(b), F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;
- Section 847.0133, F.S., relating to the protection of minors;
- Section 847.0135, relating to computer pornography;
- Section 847.0138, F.S., relating to the transmission of material harmful to minors to a minor; and
- Section 847.0145, relating to the selling or buying of minors.

III. Effect of Proposed Changes:

The bill changes the terminology for ch. 480, F.S., violations from a “summary suspension” to an “emergency suspension order” (ESO) or RO to align with ch. 120, F.S.

The bill amends s. 456.074(4), F.S., to add the designated Massage Establishment (ME) manager and an employee of the ME to the persons the Department of Health (department), State Surgeon General, must issue an ESO to suspending his or her license. The bill requires the department, State Surgeon General to enter an ESO on information that a designated massage ME manager, or a ME employee, has been arrested for committing or attempting, soliciting, or conspiring to commit, or being convicted or found guilty or pleading guilty or nolo contendere to any of the listed offenses.

The bill adds to the actions of an owner, officer, or individual directly involved in the management of a ME owned by a corporation that has more than \$250,000 of business assets in this state, that require the department, State Surgeon General, to issue an ESO, “being arrested,

³² See s. 456.074(7), F.S.

³³ Section 456.074(4), F.S.

committing, or attempting, soliciting, or conspiring to commit,” to being convicted or found guilty of, or has entered a plea of guilty or nolo contendere to a violation of s. 796.07, F.S.

The bill amends s. 847.0145, F.S., relating to the crime of selling or buying of minors, to require the department, State Surgeon General, to issue an ESO suspending the license of any licensee upon a finding by the State Surgeon General that probable cause exists to believe that the licensee has committed sexual misconduct as defined and prohibited in s. 456.063(1), F.S., or the applicable practice act, and that such acts related to the selling or buying of minors constitutes an immediate danger to the public.

The bill creates the following definitions for the massage therapy and ME practice act in ch. 480, F.S.:

- “Advertising medium” is any newspaper; airwave or computer transmission; telephone directory listing, other than an in-column listing consisting only of a name, physical address, and telephone number; business card; handbill; flyer; sign, other than a building directory listing all building tenants and their room or suite numbers; or other form of written or electronic advertisement;
- “Employee” is any person, including independent contractors or lessees of the massage establishment, whose duties involve any aspect of the massage establishment regardless of whether such person is compensated for the performance of such duties. The term does not include a person exclusively engaged in the repair or maintenance of the massage establishment or the delivery of goods to the massage establishment; and
- “Sexual activity” is any direct or indirect contact by any employee or person, or between any employees or persons, with the intent to abuse, humiliate, harass, degrade, or arouse, or gratify the sexual desire of, any employee or person, or which is likely to cause such abuse, humiliation, harassment, degradation, or arousal, or sexual gratification:
 - With or without the consent of the employee or person;
 - With or without verbal or nonverbal communication that the sexual activity is undesired;
 - With or without the use of any device or object;
 - With or without the occurrence of penetration, orgasm, or ejaculation;
 - Including, but not limited to, intentional contact with the genitalia and numerous enumerated body parts; and
 - Including, but not limited to, the intentional removal of any drape without written specific informed consent of the patient.

The bill amends the definition of “designated establishment manager” to add acupuncturists, allopathic, osteopathic, and chiropractic physicians.

The bill redefines a quorum for the Board of Massage Therapy (BMT) meetings from four members to a majority of the current BMT members present.

The bill amends s. 480.039, F.S., to add code enforcement officers to persons who may perform inspections of a ME’s compliance with amended s. 480.043(14)(a), (b), and (c), F.S.; and a law enforcement officer to persons who may perform inspections and investigations regarding a ME’s compliance with amended ss. 480.043(12) and (14)(a)-(f), 480.0465(3), 480.0475(1) and (2), and 480.0535, F.S.; in addition to the department.

The bill requires code enforcement officers, and permits law enforcement officers, to submit to the department an executed affidavit with photos, evidence and documentation obtained during an inspection or investigation within five business days after the inspection or investigation that finds there is a violation of amended ss. 480.043(12) or (14)(a), (b), (c), (d), (e), or (f), 480.0465(3), 480.0475(1) or (2), or 480.0535, F.S. Within 20 business days after receipt of the affidavit, the department must issue an ESO of the ME's license under ss. 120.60(6),³⁴ 456.073(8) or 456.0734(4), F.S. Within 30 business days of receipt of the executed affidavit, the department must inspect the ME to ensure the ME is in compliance with ch. 480, F.S.; and, if the ME is not in compliance, the department must initiate disciplinary proceedings.

The bill provides that if a law enforcement officer arrests a Massage Therapist (MT) for any violation of ch. 480, F.S., or determines that a ME continues to operate following the issuance of an ESO or RO, the officer's employing law enforcement agency must notify the department within five business days after the arrest or determination of unlawful continued operation.

The bill amends s. 480.043(12), F.S., revising the timeframe, from 10 days to 30 days, in which massage establishment owners must notify the department of the identity of another designated establishment manager after termination of a designated manager.

The bill amends s. 480.043, F.S., to add prohibited acts. Section 480.043(14)(a), F.S., as amended, indicates that sexual activity in a ME is prohibited; and a ME owner or employee may not engage in, or allow, any person to engage in sexual activity in the ME or use the ME to make arrangements to engage in sexual activity in another location. Prophylactic devices are prohibited in a ME.

The bill amends s. 480.043(14)(b), F.S., to require that if there is an outside window or windows into the ME's reception area, the outside window or windows must allow for at least 35 percent light penetration, and no more than 50 percent of the outside window or windows may be obstructed with signage, blinds, curtains or other obstructions, thus allowing the public to see the ME's reception area. A sign must be posted on the front window of the ME and include the name of the ME, its license number, and the telephone number that has been provided to the department as part of the licensing of the ME. This paragraph does not apply to a ME that is:

- Located within a public lodging establishment;
- Located within a county or municipality that has an ordinance that prescribes requirements related to business window light penetration or signage limitations if compliance with this paragraph would result in noncompliance with such ordinance;

³⁴ Section 120.60(6), F.S., requires that if an agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if: a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution; b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57, F.S., must also be promptly instituted and acted on. Section 456.073(8), F.S., require that any proceeding for the purpose of summary suspension of a license, or for the restriction of the license, of a licensee pursuant to s. 120.60(6), F.S., must be conducted by the State Surgeon General or his or her designee, as appropriate, who must issue the final summary order.

The bill amends s. 480.043(14)(c), F.S., to require all employees within the ME to be fully clothed, and all clothing must be fully opaque and made of nontransparent material.

The bill amends s. 480.043(14)(d), F.S., to require a ME to maintain a complete set of legible records in English or Spanish, which must include:

- Each employee's start date of employment;
- Full legal name;
- Date of birth;
- Home address;
- Telephone number;
- Employment position; and
- A copy of the employee's government identification required under s. 480.0535, F.S. All information required under this paragraph must be recorded before the employee may provide any service or treatment to a customer or patient.

The bill amends s. 480.043(14)(e), F.S., to require a ME to conspicuously display a 2-inch by 2-inch photo for each employee, which, for MTs, must be attached to the MT's license. Such display must also include the employee's full legal name and employment position. All information required to be displayed must be displayed before the employee may provide any service or treatment to a customer or patient. A ME within a public lodging establishment may satisfy this requirement by displaying the photos and required information in an employee break room or other room that is used by employees but is not used by customers or patients.

The bill amends s. 480.043(14)(f), F.S., to require a ME to maintain a complete set of legible records in English or Spanish, which must include the date, time, and type of service or treatment provided, the full legal name of the employee who provided the service or treatment, and the full legal name, home address, and telephone number of the customer or patient. A copy of the customer's or patient's photo identification may be used to provide the full legal name and home address of the customer or patient. The required records must be maintained for at least one year after the provision of the service or treatment. All required information must be collected and recorded before the provision of any service or treatment to a customer or patient. The ME must confirm the identification of the customer or patient before the provision of any service or treatment to the customer or patient.

The bill amends s. 480.043(14)(3), F.S., to require the BMT to adopt rules governing the operation of MEs and their facilities, personnel, safety and sanitary requirements, financial responsibility, insurance coverage, and license application and granting process.

The bill amends s. 480.043(15), F.S., to exempt acupuncturists, allopathic, osteopathic, and chiropractic physicians from s. 480.043(13), F.S., when they employ licensed MTs to perform massage therapy on the practitioner's patients at his or her place of practice; but the exemption does not restrict the investigations by the department for violations of chs. 456 or 480, F.S.

The bill amends s. 480.0465, F.S., to address advertising media, to add the Internet to the currently listed medium. The bill requires advertisements to include the physical address of the

ME, and the telephone number provided to the department as part of the licensing of the ME. The inclusion of the physical address and telephone number is not required for an advertisement by a ME whose ME owner operates more than five locations in this state.

The bill amends s. 480.0465, F.S., to prohibit a ME owner or employee from placing, publishing, or distributing, or causing to be placed, published, or distributed, any advertisement in any advertising medium that states prostitution services, escort services, or sexual services are available, and prohibits a MT or a ME or its employees from placing, publishing, or distributing, or causing to be placed, published, or distributed, in any online advertisement on any website known for advertising prostitution services, escort services, or sexual services.

The bill amends s. 480.0475, F.S., to prohibit a ME from operating from midnight to 5:00 a.m., and prohibits massage services from being performed after 10:00 p.m. and before 5:00 a.m. The bill prohibits the ME from being used for a shelter, harbor, or as sleeping quarters for any person. The bill amends s. 480.0476, F.S., to add an additional penalty for violations of summary suspension of the ME's license under in ss. 120.60(6) or 456.073(8), F.S.

The bill amends s. 480.0485, F.S., to add that sexual misconduct in the practice of massage therapy includes requiring patient nudity as part of any massage service or any other service in the ME or the intentional removal of any drape without the written specific informed consent of the patient.

The bill amends s. 480.0535, F.S., to require a department investigator to examine the valid government identifications from all employees, client records, and employee records. The bill adds summary suspension under ss. 120.60(6) or 456.073(8), F.S., for failure to provide the required documents under s. 480.0535, F.S., and requires the department to notify a federal immigration office if a person operating a ME, an employee, or any person performing massage therapy in a ME fails to provide a valid government identification as required.

The bill amends s. 847.001, F.S., to add to the definition of an unlicensed MEs, for purposes of crimes, the employees, or attendants who are licensed MTs.

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/SB 1338 will have a significant negative fiscal impact on the Department of Health (department) requiring eight additional positions and \$876,703 in trust funded budget authority³⁵ including \$837,991 in recurring funding to ensure cases are opened, investigated, and processed in the required timeframe specified in the bill. The bill appropriates eight full-time equivalent positions with associated salary rate of 544,600 and \$837,991 in recurring funds and \$38,712 in nonrecurring funds from the Department of Health Medical Quality Assurance Trust Fund to the Division of Medical Quality Assurance of the Department of Health for the implementation of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.074, 480.033, 480.035, 480.039, 480.043, 480.0465, 480.0475, 480.0485, 480.0535, and 847.001, F.S.

³⁵ Email from the Department of Health to the Senate Appropriations Committee on Health and Human Services, April 3, 2023, on file with the Senate Appropriations Subcommittee on Health and Human Services.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Appropriations Committee on Health and Human Services on April 18, 2023:**

The committee substitute appropriates eight full-time equivalent positions and the associated salary rate and budget to the Department of Health (department) for the implementation of this bill and revises the timeframe, from 10 days to 30 days, in which massage establishment owners must notify the department of the identity of another designated establishment manager after termination of a designated manager.

CS by Health Policy April 4, 2023:

The CS:

- Adds to whom the department is required to issue an ESO for a license, the designated ME manager and an employee of the ME, upon receipt of information that they have been arrested for committing or attempting to commit soliciting, conspiring to commit, or been convicted or found guilty or plead guilty or nolo contendere to any of the listed offenses;
- Adds to the list of criminal offenses the department is required to issue an ESO for a license of a massage therapist and ME on a finding of the Surgeon General that probable cause exists to believe the licensee has committed sexual misconduct under ch. 456, F.S., or the licensee's applicable practice act, and that violation constitutes an immediate danger to the public;
- Revises the definition of a designated ME manager to describe an acupuncturist as a health care practitioner, rather than a physician, and makes clear that the definition of employee only applies to ch. 480, F.S.;
- Changes terminology for violations from a "summary suspension" to an ESO to align with ch. 120, F.S.; changes from 20 days to 30 days the time the department has after receiving an affidavit with photos, evidence and documentation of a specific violation from a code enforcement officer or law enforcement officer to perform an inspection; and if the violation persists, to initiate disciplinary proceedings.
- Requires the law enforcement agency who arrests a massage therapist, or finds a ME still operating after an ESO or Restive Order (RO) has issued, not just after summary suspension but also after an RO, to notify the department within five days.
- Add blinds, curtains and other obstructions to signage that is prohibited if it obstructs more than 50 percent of outside windows; and deletes the department rule making authority and summary suspension as a penalty for non-compliance.
- Delete summary suspension for violations of a ME's prohibited acts and for a ME's violation of documents required by person's working in an ME. Deletes the severability clause.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



265348

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2023	.	
	.	
	.	
	.	

The Appropriations Committee on Health and Human Services
(Martin) recommended the following:

Senate Amendment (with title amendment)

Delete lines 239 - 246
and insert:
subsections (3) and (12) of that section are amended, to read:
480.043 Massage establishments; requisites; licensure;
inspection; human trafficking awareness training and policies;
prohibited acts.—

(3) The board shall adopt rules governing the operation of
establishments and their facilities, employees ~~personnel~~, safety



265348

and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process.

(12) As a condition of licensure, a massage establishment must have a designated establishment manager. The designated establishment manager is responsible for complying with all requirements related to operating the establishment in this section and shall practice at the establishment for which he or she has been designated. Within 30 ~~10~~ days after termination of a designated establishment manager, the establishment owner must notify the department of the identity of another designated establishment manager. Failure to have a designated establishment manager practicing at the location of the establishment shall result in summary suspension of the establishment license as described in s. 456.073(8) or s. 120.60(6). An establishment licensed before July 1, 2019, must identify a designated establishment manager by January 1, 2020.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Between lines 27 and 28
insert:
revising the timeframe in which massage establishment owners must report specified information to the department;



258224

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2023	.	
	.	
	.	
	.	

The Appropriations Committee on Health and Human Services
(Martin) recommended the following:

Senate Amendment (with title amendment)

Between lines 475 and 476
insert:

Section 11. For the 2023-2024 fiscal year, the sums of
\$837,991 in recurring funds and \$38,712 in nonrecurring funds
from the Department of Health Medical Quality Assurance Trust
Fund are appropriated to the Division of Medical Quality
Assurance of the Department of Health, and eight full-time
equivalent positions with associated salary rate of 544,600 are



258224

11 authorized, for the purpose of implementing this act.
12
13 ===== T I T L E A M E N D M E N T =====
14 And the title is amended as follows:
15 Between lines 77 and 78
16 insert:
17 appropriation; providing an

By the Committee on Health Policy; and Senator Martin

588-03490-23

20231338c1

1 A bill to be entitled
 2 An act relating to massage establishments; amending s.
 3 456.074, F.S.; authorizing the Department of Health to
 4 immediately suspend the license of massage therapists
 5 and massage establishments if the massage therapist or
 6 certain individuals connected to the massage
 7 establishment are arrested for, convicted or found
 8 guilty of, or enter criminal pleas to specified
 9 violations; amending s. 480.033, F.S.; providing and
 10 revising definitions; amending s. 480.035, F.S.;
 11 revising quorum requirements for the Board of Massage
 12 Therapy; amending s. 480.039, F.S.; authorizing
 13 specified enforcement officers to perform inspections
 14 and investigations of massage establishments for
 15 specified purposes; requiring code enforcement
 16 officers, and authorizing law enforcement officers, to
 17 submit affidavits with specified photos and other
 18 evidence and documentation to the department within a
 19 specified timeframe; requiring certain law enforcement
 20 agencies to notify the department within a specified
 21 timeframe after discovering certain violations by a
 22 massage therapist or massage establishment; requiring
 23 the department to inspect a massage establishment
 24 within a specified timeframe for specified violations
 25 and to initiate disciplinary proceedings if violations
 26 are discovered; amending s. 480.043, F.S.; revising
 27 certain rules the board is required to adopt;
 28 prohibiting sexual activity and certain devices in
 29 massage establishments; specifying prohibited conduct

Page 1 of 17

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03490-23

20231338c1

30 by massage establishment owners and employees;
 31 providing requirements for outside windows and signs
 32 in massage establishments; providing exceptions;
 33 providing employee dress code requirements; requiring
 34 establishments to maintain certain employment records
 35 in English or Spanish; requiring that specified
 36 information be recorded before an employee may provide
 37 services or treatment; requiring massage
 38 establishments to conspicuously display a photo and
 39 specified information for each employee; requiring
 40 that such photos and information be displayed before
 41 an employee may provide services or treatment;
 42 providing for such requirements in massage
 43 establishments within public lodging establishments;
 44 requiring massage establishments to maintain customer
 45 and patient records for services and treatment
 46 provided in the massage establishment in English or
 47 Spanish; providing that medical records satisfy this
 48 requirement if they contain specified information;
 49 requiring massage establishments to maintain such
 50 records for a specified timeframe; requiring massage
 51 establishments to collect and record specified
 52 information and confirm the identification of a
 53 customer or patient before providing services or
 54 treatment; amending s. 480.0465, F.S.; revising
 55 advertising requirements for massage therapists and
 56 massage establishments; amending s. 480.0475, F.S.;
 57 revising hours during which a massage establishment
 58 may operate; requiring that all customer and patient

Page 2 of 17

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03490-23

20231338c1

services and treatment be performed within specified hours; prohibiting establishments from sheltering or harboring, or being used as sleeping quarters for, any person; providing criminal penalties; amending s. 480.0485, F.S.; specifying additional conduct that constitutes sexual misconduct in the practice of massage therapy; amending s. 480.0535, F.S.; requiring department investigators to request valid government identification from all employees while in a massage establishment; specifying additional documents a person operating a massage establishment must immediately present, upon request, to department investigators and law enforcement officers; requiring the department to notify a federal immigration office if specified persons fail to provide valid government identification; amending s. 847.001, F.S.; revising the definitions of the terms "adult entertainment establishment" and "unlicensed massage establishment" for purposes of certain criminal conduct; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 456.074, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

456.074 Certain health care practitioners; immediate suspension of license.—

(4) The department shall issue an emergency order

588-03490-23

20231338c1

suspending the license of a massage therapist ~~and~~ or establishment as those terms are defined in chapter 480 upon receipt of information that the massage therapist, the designated establishment manager as defined in chapter 480, an employee of the establishment, a person with an ownership interest in the establishment, or, for a corporation that has more than \$250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the establishment has been arrested for committing or attempting, soliciting, or conspiring to commit, or convicted or found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, a violation of s. 796.07 ~~s. 796.07(2)(a) which is reclassified under s. 796.07(7)~~ or a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

- (a) Section 787.01, relating to kidnapping.
- (b) Section 787.02, relating to false imprisonment.
- (c) Section 787.025, relating to luring or enticing a child.
- (d) Section 787.06, relating to human trafficking.
- (e) Section 787.07, relating to human smuggling.
- (f) Section 794.011, relating to sexual battery.
- (g) Section 794.08, relating to female genital mutilation.
- (h) Former s. 796.03, relating to procuring a person under the age of 18 for prostitution.
- (i) Former s. 796.035, relating to the selling or buying of minors into prostitution.
- (j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.

588-03490-23

20231338c1

(k) Section 796.05, relating to deriving support from the proceeds of prostitution.

(l) Section 796.07(4)(a)3., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(o) Section 827.071, relating to sexual performance by a child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(s) Section 847.0145, relating to the selling or buying of minors.

(7) The department shall issue an emergency order suspending the license of any licensee upon a finding of the State Surgeon General that probable cause exists to believe that the licensee has committed sexual misconduct as defined and prohibited in s. 456.063(1), or the applicable practice act, and that such violation constitutes an immediate danger to the public.

Section 2. Present subsections (1) through (6) and (7) through (12) of section 480.033, Florida Statutes, are

588-03490-23

20231338c1

redesignated as subsections (2) through (7) and (9) through (14), respectively, new subsections (1) and (8) and subsection (15) are added to that section, and present subsection (6) of that section is amended, to read:

480.033 Definitions.—As used in this act:

(1) "Advertising medium" means any newspaper; airwave or computer transmission; telephone directory listing, other than an in-column listing consisting only of a name, physical address, and telephone number; business card; handbill; flyer; sign, other than a building directory listing all building tenants and their room or suite numbers; or other form of written or electronic advertisement.

(7)(6) "Designated establishment manager" means a massage therapist, a health care practitioner licensed under chapter 457, or a physician licensed under chapter 458, chapter 459, or chapter 460 who holds a clear and active license without restriction, who is responsible for the operation of a massage establishment in accordance with the provisions of this chapter, and who is designated the manager by the rules or practices at the establishment.

(8) "Employee" means any person, including independent contractors or lessees of the massage establishment, whose duties involve any aspect of the massage establishment regardless of whether such person is compensated for the performance of such duties. The term does not include a person exclusively engaged in the repair or maintenance of the massage establishment or the delivery of goods to the massage establishment. This definition applies to chapter 480 only.

(15) "Sexual activity" means any direct or indirect contact

588-03490-23

20231338c1

by any employee or person, or between any employees or persons, with the intent to abuse, humiliate, harass, degrade, or arouse, or gratify the sexual desire of, any employee or person, or which is likely to cause such abuse, humiliation, harassment, degradation, or arousal, or sexual gratification:

(a) With or without the consent of the employee or person;

(b) With or without verbal or nonverbal communication that the sexual activity is undesired;

(c) With or without the use of any device or object;

(d) With or without the occurrence of penetration, orgasm, or ejaculation;

(e) Including, but not limited to, intentional contact with the genitalia, groin, femoral triangle, anus, buttocks, gluteal cleft, breast or nipples, mouth, or tongue; and

(f) Including, but not limited to, the intentional removal of any drape without written specific informed consent of the patient.

Section 3. Subsection (5) of section 480.035, Florida Statutes, is amended to read:

480.035 Board of Massage Therapy.—

(5) The board shall hold such meetings during the year as it may determine to be necessary, one of which shall be the annual meeting. The chair of the board shall have the authority to call other meetings at her or his discretion. A quorum of the board shall consist of not less than a majority of the current membership of the board ~~four members~~.

Section 4. Section 480.039, Florida Statutes, is amended to read:

480.039 Investigative services; reporting.—

588-03490-23

20231338c1

(1) The department shall provide all investigative services required in carrying out ~~the provisions of~~ this act. A code enforcement officer may perform inspections regarding a massage establishment's compliance with s. 480.043(14)(a), (b), and (c), and a law enforcement officer may perform inspections and investigations regarding a massage establishment's compliance with ss. 480.043(12) and (14)(a)-(f), 480.0465(3), 480.0475(1) and (2), and 480.0535. Code enforcement officers shall, and law enforcement officers may, submit to the department an executed affidavit with photos and any other evidence or documentation obtained during the inspection or investigation within 5 business days after the inspection or investigation that finds there is a violation of s. 480.043(12) or (14)(a), (b), (c), (d), (e), or (f), s. 480.0465(3), s. 480.0475(1) or (2), or s. 480.0535. For violations of s. 480.043(14)(a) or (f), s. 480.0465(3), s. 480.0475(2), or s. 480.0535, within 20 business days after receipt of such executed affidavit, the department shall issue an emergency order suspending the license of the massage establishment. For violations of s. 480.043(12) or (14)(b), (c), (d), or (e) or s. 480.0475(1), within 30 business days after receipt of an executed affidavit, the department shall inspect the massage establishment to ensure the massage establishment's compliance with this chapter, and, if the massage establishment is not in compliance with this chapter, the department shall initiate a disciplinary proceeding.

(2) If a law enforcement officer arrests a massage therapist for any violation of this chapter or determines that a massage establishment continues to operate following the issuance of an emergency suspension or restriction by the

588-03490-23

20231338c1

department, the officer's employing law enforcement agency shall notify the department within 5 business days after the arrest or determination of unlawful continued operation.

Section 5. Present subsection (14) of section 480.043, Florida Statutes, is redesignated as subsection (15) and amended, a new subsection (14) is added to that section, and subsection (3) of that section is amended, to read:

480.043 Massage establishments; requisites; licensure; inspection; human trafficking awareness training and policies; prohibited acts.—

(3) The board shall adopt rules governing the operation of establishments and their facilities, ~~employees personnel~~, safety and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process.

(14)(a) Sexual activity in any massage establishment is prohibited. An establishment owner or employee may not engage in or allow any person to engage in sexual activity in the massage establishment or use the establishment to make arrangements to engage in sexual activity in another location. Prophylactic devices are prohibited in a massage establishment.

(b) If there is an outside window or windows into the massage establishment's reception area, the outside window or windows must allow for at least 35 percent light penetration, and no more than 50 percent of the outside window or windows may be obstructed with signage, blinds, curtains, or other obstructions, thus allowing the public to see the massage establishment's reception area. A sign must be posted on the front window of the massage establishment and include the name of the massage establishment, its license number, and the

588-03490-23

20231338c1

telephone number that has been provided to the department as part of the licensing of the massage establishment. This paragraph does not apply to a massage establishment within a public lodging establishment as defined in s. 509.013(4). This paragraph does not apply to a massage establishment located within a county or municipality that has an ordinance that prescribes requirements related to business window light penetration or signage limitations if compliance with this paragraph would result in noncompliance with such ordinance.

(c) All employees within the massage establishment must be fully clothed and such clothing must be fully opaque and made of nontransparent material that does not expose the employee's genitalia, undergarments, or lingerie.

(d) A massage establishment must maintain a complete set of legible records in English or Spanish, which must include each employee's start date of employment, full legal name, date of birth, home address, telephone number, and employment position and a copy of the employee's government identification required under s. 480.0535. All information required under this paragraph must be recorded before the employee may provide any service or treatment to a customer or patient.

(e) A massage establishment must conspicuously display a 2-inch by 2-inch photo for each employee, which, for massage therapists, must be attached to the massage therapist's license. Such display must also include the employee's full legal name and employment position. All information required under this paragraph must be displayed before the employee may provide any service or treatment to a customer or patient. A massage establishment within a public lodging establishment as defined

588-03490-23

20231338c1

291 in s. 509.013(4) may satisfy this requirement by displaying the
 292 photos and required information in an employee break room or
 293 other room that is used by employees but is not used by
 294 customers or patients.

295 (f) A massage establishment must maintain a complete set of
 296 legible records in English or Spanish, which must include the
 297 date, time, and type of service or treatment provided; the full
 298 legal name of the employee who provided the service or
 299 treatment; and the full legal name, home address, and telephone
 300 number of the customer or patient. Medical records may satisfy
 301 this requirement if the records include the specified
 302 information. A copy of the customer's or patient's photo
 303 identification may be used to provide the full legal name and
 304 home address of the customer or patient. Records required under
 305 this paragraph must be maintained for at least 1 year after the
 306 provision of the service or treatment. All information required
 307 under this paragraph must be collected and recorded before the
 308 provision of any service or treatment to a customer or patient.
 309 The massage establishment must confirm the identification of the
 310 customer or patient before the provision of any service or
 311 treatment to the customer or patient.

312 (15)-(14) Except for the requirements of subsection (13),
 313 this section does not apply to a practitioner physician licensed
 314 under chapter 457 or a physician licensed under chapter 458,
 315 chapter 459, or chapter 460 who employs a licensed massage
 316 therapist to perform massage therapy on the practitioner's or
 317 physician's patients at his or her the physician's place of
 318 practice. This subsection does not restrict investigations by
 319 the department for violations of chapter 456 or this chapter.

588-03490-23

20231338c1

320 Section 6. Section 480.0465, Florida Statutes, is amended
 321 to read:

322 480.0465 Advertisement; prohibitions.—

323 (1) Each massage therapist or massage establishment
 324 licensed under this act shall include the number of the license
 325 in any advertisement of massage therapy services appearing in
 326 any advertising medium, including a newspaper, airwave
 327 transmission, telephone directory, Internet, or other
 328 advertising medium. Pending licensure of a new massage
 329 establishment under s. 480.043(7), the license number of a
 330 licensed massage therapist who is an owner or principal officer
 331 of the establishment may be used in lieu of the license number
 332 for the establishment. The advertisement must also include the
 333 physical address of the massage establishment and the telephone
 334 number that has been provided to the department as part of the
 335 licensing of the massage establishment. However, the inclusion
 336 of the physical address and telephone number is not required for
 337 an advertisement by a massage establishment whose establishment
 338 owner operates more than five locations in this state.

339 (2) An establishment owner or employee may not place,
 340 publish, or distribute, or cause to be placed, published, or
 341 distributed, any advertisement in any advertising medium which
 342 states prostitution services, escort services, or sexual
 343 services are available.

344 (3) A massage therapist or a massage establishment or its
 345 employees may not place, publish, or distribute, or cause to be
 346 placed, published, or distributed, any online advertisement on
 347 any website known for advertising prostitution services, escort
 348 services, or sexual services.

588-03490-23

20231338c1

Section 7. Section 480.0475, Florida Statutes, is amended to read:

480.0475 Massage establishments; prohibited practices; penalties.-

(1) ~~A message establishment may only be operated person may not operate a message establishment~~ between the hours of 5 a.m. and midnight and all customer and patient services and treatment must be performed between the hours of 5 a.m. and 10 p.m. This subsection does not apply to a massage establishment:

(a) Located on the premises of a health care facility as defined in s. 408.07; a health care clinic as defined in s. 400.9905(4); a hotel, motel, or bed and breakfast inn, as those terms are defined in s. 509.242; a timeshare property as defined in s. 721.05; a public airport as defined in s. 330.27; or a pari-mutuel facility as defined in s. 550.002;

(b) In which every massage performed between the hours of 10 p.m. midnight and 5 a.m. is performed by a massage therapist acting under the prescription of a physician or physician assistant licensed under chapter 458, an osteopathic physician or physician assistant licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, an advanced practice registered nurse licensed under part I of chapter 464, or a dentist licensed under chapter 466; or

(c) Operating during a special event if the county or municipality in which the establishment operates has approved such operation during the special event.

(2) A person operating a massage establishment may not use or permit the establishment to be used as a principal domicile

588-03490-23

20231338c1

~~for, to shelter or harbor, or as sleeping quarters for any person~~ unless the establishment is zoned for residential use under a local ordinance.

(3) A person violating ~~the provisions of~~ this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A second or subsequent violation of this section is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 8. Section 480.0485, Florida Statutes, is amended to read:

480.0485 Sexual misconduct in the practice of massage therapy.-The massage therapist-patient relationship is founded on mutual trust. Sexual misconduct in the practice of massage therapy means violation of the massage therapist-patient relationship through which the massage therapist uses that relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of massage therapy includes requiring patient nudity as part of any massage service or any other service in the massage establishment or the intentional removal of any drape without the written specific informed consent of the patient. Sexual misconduct in the practice of massage therapy is prohibited.

Section 9. Section 480.0535, Florida Statutes, is amended to read:

480.0535 Documents required while working in a massage establishment; penalties; reporting requirement.-

588-03490-23

20231338c1

(1) In order to provide the department and law enforcement agencies the means to more effectively identify, investigate, and arrest persons engaging in human trafficking, an employee a person employed by a massage establishment and any person performing massage therapy in a massage establishment therein must immediately present, upon the request of an investigator of the department or a law enforcement officer, valid government identification while in the establishment. An investigator of the department must request valid government identification from all employees while in the establishment. A valid government identification for the purposes of this section is:

(a) A valid, unexpired driver license issued by any state, territory, or district of the United States;

(b) A valid, unexpired identification card issued by any state, territory, or district of the United States;

(c) A valid, unexpired United States passport;

(d) A naturalization certificate issued by the United States Department of Homeland Security;

(e) A valid, unexpired alien registration receipt card (green card); or

(f) A valid, unexpired employment authorization card issued by the United States Department of Homeland Security.

(2) A person operating a massage establishment must:

(a) Immediately present, upon the request of an

investigator of the department or a law enforcement officer:

1. Valid government identification while in the establishment.

2. A copy of the documentation specified in paragraph

(1) (a) for each employee and any person performing massage

588-03490-23

20231338c1

therapy in the establishment.

3. A copy of the documents required under s. 480.043(14) (d) and (f).

(b) Ensure that each employee and any person performing massage therapy in the massage establishment is able to immediately present, upon the request of an investigator of the department or a law enforcement officer, valid government identification while in the establishment.

(3) A person who violates ~~any provision of~~ this section commits:

(a) For a first violation, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) For a second violation, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) For a third or subsequent violation, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) The department shall notify a federal immigration office if a person operating a massage establishment, an employee, or any person performing massage therapy in a massage establishment fails to provide a valid government identification as required under this section.

Section 10. Paragraph (d) of subsection (2) of section 847.001, Florida Statutes, is amended to read:

847.001 Definitions.—As used in this chapter, the term:

(2) "Adult entertainment establishment" means the following terms as defined:

(d) "Unlicensed massage establishment" means any business or enterprise that offers, sells, or provides, or that holds

588-03490-23

20231338c1

465 itself out as offering, selling, or providing, massages that
466 include bathing, physical massage, rubbing, kneading, anointing,
467 stroking, manipulating, or other tactile stimulation of the
468 human body by either male or female employees or attendants,
469 including employees or attendants who are massage therapists
470 licensed under s. 480.041, by hand or by any electrical or
471 mechanical device, on or off the premises. The term "unlicensed
472 massage establishment" does not include an establishment
473 licensed under s. 480.043 which routinely provides medical
474 services by state-licensed health care practitioners and massage
475 therapists licensed under s. 480.041.
476 Section 11. This act shall take effect July 1, 2023.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Appropriations
Appropriations Committee on Criminal and Civil Justice
Appropriations Committee on Health and Human Services
Community Affairs
Environment and Natural Resources
Ethics and Elections

SELECT COMMITTEE:

Select Committee on Resiliency

SENATOR JONATHAN MARTIN

33rd District

April 5, 2023

The Honorable Gayle Harrell
Senate Appropriations Committee on Health and Human Services, Chair
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

RE: CS/SB 1338 - An act relating to Massage Establishments

Dear Chair Harrell:

Please allow this letter to serve as my respectful request to place CS/SB 1338 Massage Establishments on the next committee agenda.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Martin".

Jonathan Martin
Senate District 33

Cc: Tonya Money, Staff Director
Robin Jackson, Administrative Assistant

REPLY TO:

- ☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/18/2023

Meeting Date

Health Approps.

Committee

1338

Bill Number or Topic

Tab 7

Amendment Barcode (if applicable)

Name

Laura Donaldson

Phone

813-495-0575

Address

109 N. Brush St., Ste 300

Email

ldonaldson@mansonbalvessom

Street

Tampa

City

FL

State

33602

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Collier County Sheriff's Office

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 1338 (Tab 7)

Meeting Date

April 18, 2023
Approp. Committee on
Health and Human Services
Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

265348

Amendment Barcode (if applicable)

Name

Erin Ballas

Phone

850 728 6387

Address

730 E. Park Ave.

Email

erinballas@paconsultants.com

Street

Tallahassee

FL

32301

City

State

Zip

Speaking:

☐ For

☐ Against

☐ Information

OR

Waive Speaking:



In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:

American Massage
Therapy Association



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

BILL: CS/SB 1540

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Garcia

SUBJECT: Elder Abuse and Vulnerable Adult Abuse Fatality Review Teams

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Fav/CS
2.	Howard	Money	AHS	Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1540 expands the scope of the existing Elder Abuse Fatality Review Teams to include vulnerable adults and changes their name to the “Elder and Vulnerable Adult Abuse Fatality Review Teams” (EV-FRTs), with the specified purpose of learning how to prevent certain abuse and abuse-related deaths and improve the system response of such instances. The bill also expands the scope of the teams to include “near fatal” incidents and incidents which are the result of exploitation and expands the membership. The bill provides a definition for the term “vulnerable adult” and allows the members of an EV-FRT to determine the number and types of incidents it chooses to review.

The bill allows the following persons or entities to initiate an EV-FRT:

- A state attorney, or his or her designee;
- A law enforcement agency;
- The Department of Children and Families (the DCF);
- The Office of the Attorney General; and
- The Agency for Persons with Disabilities (the APD);

The bill expands the records that may be reviewed by the team to include open and closed cases from entities other than a state attorney by removing the provision that restricted teams to review only closed cases referred and redacted by a state attorney.

The bill requires all members of an EV-FRT to sign a confidentiality agreement acknowledging the requirement to protect from unauthorized disclosure of any confidential and exempt oral or written communications, information, or records produced or acquired by the review team. The bill also provides a criminal penalty for the knowing and willful disclosure of certain information produced or acquired by an EV-FRT, and requires confidentiality agreements to reference such penalties.

The bill creates provisions to protect individuals interviewed and information collected by EV-FRTs from being used in a civil or criminal trial or administrative or disciplinary proceeding. However, the bill provides that information, documents, and records otherwise available from other sources are not immune from disclosure, discovery, or introduction into evidence solely because such information was presented to or reviewed by an EV-FRT.

The bill makes conforming changes in the remainder of section 415.1103, Florida Statutes, to align with the changes relating to the scope of the EV-FRTs, and limits the circumstances under which members of a team may directly contact members of a deceased elder's family.

The bill has no fiscal impact on state government.

The bill takes effect on July 1, 2023.

II. Present Situation:

Elder Population

As the country's "baby-boomer" population reaches retirement age and life expectancy increases, the nation's elder population, persons 65 years of age and older, is projected to increase from 54.1 million in 2019 to 80.8 million by 2040 and 94.7 million by 2060.¹ Florida has long been a destination state for senior citizens and has the highest percentage of senior residents in the entire nation. There are currently approximately 5.5 million residents age 60 or older in Florida, and the state ranks first in the nation for population size of individuals over 65 years old.²

Elder Abuse

Elder populations are vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.³ In general, elder abuse is a

¹ The Administration for Community Living, *Projected Future Growth of Older Population*, available at <https://acl.gov/aging-and-disability-in-america/data-and-research/projected-future-growth-older-population> (last visited March 19, 2023).

² The Florida Department of Elder Affairs (the DOEA), *About Us*, available at <https://elderaffairs.org/about-us/#:~:text=Florida%20is%20home%20to%20nearly%205.5%20million%20residents,health%2C%20and%20physical%20security%20of%20our%20elder%20population>; see also Pew Research Center, *Where Do the Oldest Americans Live?*, July 9, 2015, available at <https://www.pewresearch.org/fact-tank/2015/07/09/where-do-the-oldest-americans-live/> (all sites last visited March 28, 2023).

³ National Center on Elder Abuse, *FAQs: What Causes Elder Abuse to Happen*, available at <https://ncea.acl.gov/FAQ.aspx> (last visited March 28, 2023).

term referring to any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to an older adult.⁴

In Florida, almost 1.5 million senior citizens live in medically underserved areas and over 1.5 million suffer from one or more disabilities.⁵ According to the Department of Justice, approximately 1 in 10 seniors is abused each year in the United States. The trauma of elder abuse can result in premature death, the deterioration of physical and psychological health, destruction of social and familial ties, devastating financial loss and more.⁶ Elder abuse can have significant physical and emotional effects on an older adult, and can lead to premature death.⁷ Victims of elder abuse are four times more likely to be admitted to a nursing home and three times more likely to be admitted to a hospital.⁸

Up to five million older Americans are abused annually, and the annual loss by victims of financial abuse is estimated to be at least \$36.5 billion.⁹ Abusers can be both women and men, and in almost 60% of elder abuse and neglect incidents, the perpetrator is a family member.¹⁰ Approximately two thirds of perpetrators are adult children or spouses.¹¹

Department of Elder Affairs

The Florida Department of Elder Affairs (the DOEA) provides most direct services through its Division of Statewide Community-Based Services, which works through the state's 11 Area Agencies on Aging and local service providers to deliver essential services to a vital segment of the population.¹²

The major focus of the DOEA is to provide home and community-based services to seniors who are at risk of being placed into a long-term care facility because of their degree of frailty.¹³ The goal of the DOEA is to use resources to ensure that the greatest number of elders possible get to choose where they live while living healthy, active, and fulfilling lives in their communities.¹⁴

Florida Long-Term Care Ombudsman Program

The federal Older Americans Act (OAA) requires each state to create a Long-Term Care Ombudsman Program (the Program) to be eligible to receive funding associated with programs

⁴ *Id.* at *FAQs: What is Elder Abuse*

⁵ The DOEA, *2021 Profile of Older Floridians*, available at <https://elderaffairs.org/wp-content/uploads/Florida-Profile-2021.pdf> (last visited March 28, 2023).

⁶ The U.S. Department of Justice (DOJ), *About Elder Abuse*, available at <https://www.justice.gov/elderjustice/about-elder-abuse> (last visited March 28, 2023).

⁷ *Id.*

⁸ The DOJ, *Elder Justice*, available at <https://www.justice.gov/usao-ndwv/programs/elder-justice> (last visited March 28, 2023).

⁹ The National Council on Aging, *Get the Facts on Elder Abuse*, available at <https://www.ncoa.org/article/get-the-facts-on-elder-abuse> (last visited March 28, 2023).

¹⁰ *Id.*

¹¹ *Id.*

¹² The Florida Department of Elder Affairs, *About Us*, available at <https://elderaffairs.org/about-us/> (last visited March 30, 2023).

¹³ *Id.*

¹⁴ *Id.*

under the OAA.¹⁵ The Program was founded in 1975 as a result of the OAA, which grants a special set of residents' rights to individuals who live in long-term care facilities such as nursing homes, assisted living facilities (ALFs), and adult family care homes.¹⁶ Volunteer ombudsmen seek to ensure the health, safety, welfare and rights of these residents throughout Florida.

The Program is administratively housed in the DOEA and is headed by the State Long-Term Care Ombudsman, who is appointed by the DOEA Secretary.¹⁷ The Program is required to establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents of ALFs, nursing homes, and adult family care homes.¹⁸ Every resident or representative of a resident must receive, upon admission to a long-term care facility, information regarding the program and the statewide toll-free telephone number for receiving complaints.¹⁹ In addition to investigating and resolving complaints, ombudsmen conduct unannounced visits to assess the quality of care in facilities, referred to as administrative assessments.²⁰

The State Ombudsman carries out his or her responsibilities under Florida and federal law through the training and certification of volunteers who operate through district and local councils, and through staff positions in the state and district offices established to coordinate and assist the local councils.²¹

Federal regulations provide that the State Ombudsman may designate employees or volunteers within the Program office to carry out the duties of the office as "representatives of the office," subject to the training and certification requirements for representatives of the office.²² However, Florida law specifies certain categories of individuals who may not be appointed as ombudsmen, including, in part, "An employee of the [DOEA], except for staff certified as ombudsmen in the district offices."²³ "Offices" in this context refers to the district offices of the State Long-Term Care Ombudsman Program.²⁴ Read together, these provisions exempt staff in the Program's district offices from the general prohibition against appointment of DOEA employees as ombudsmen, but they do not permit staff in the Program's state office to be appointed as ombudsmen.²⁵

¹⁵ See s. 400.0061(1), F.S.; see also the Office of Program Policy Analysis and Governmental Accountability, *Department of Elder Affairs, Older Americans Act Programs*, available at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5026> (last visited March 16, 2023).

¹⁶ The Florida Ombudsman Program, *About Us*, available at <https://ombudsman.elderaffairs.org/about-us/> (last visited March 13, 2023).

¹⁷ Section 400.0063(2), F.S.

¹⁸ Section 400.0078(1), F.S.

¹⁹ Section 400.0078(2), F.S.

²⁰ See s. 400.0074, F.S.

²¹ The Department of Elder Affairs (the DOEA), *Agency Analysis of SB 1396*, p. 2, February 11, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The DOEA Analysis").

²² *Id.*

²³ See s. 400.0069(4)(b)4., F.S.

²⁴ The DOEA Analysis at p. 2; see also s. 400.0060(7), F.S.

²⁵ *Id.*

Aging and Disability Resource Centers

The DOEA administers programs and services for elders across the state of Florida through 11 Area Agencies on Aging, which operate as Aging and Disability Resource Centers (ADRCs).²⁶ These ADRCs function as a single, coordinated system for information and access to services for all Floridians seeking long-term care resources.²⁷ The ADRCs provide information and assistance about state and federal benefits, as well as available local programs and services.²⁸ The primary functions of the ADRCs include providing information and referral services, ensuring that eligibility determinations are done properly and efficiently, triaging clients who require assistance, and managing the availability of financial resources for certain key long-term care programs targeted for elders to ensure financial viability and stability.²⁹

Florida's 11 ADRCs are distributed throughout the state as shown in the map below:³⁰



²⁶ The DOEA, *Aging and Disability Resource Centers (ADRCs)*, available at <https://elderaffairs.org/resource-directory/aging-and-disability-resource-centers-adrcs/> (last visited March 13, 2023).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

Office of Public and Professional Guardians

In 1999, the Legislature created the “Public Guardianship Act” and established the Statewide Public Guardianship Office (SPGO) within the DOEA.³¹ In 2016, the Legislature renamed the Statewide Public Guardianship Office within the DOEA as the Office of Public and Professional Guardians (OPPG), required OPPG to regulate professional guardians and investigate complaints, and added six full-time equivalent positions to the OPPG, including an attorney and investigators.³² The OPPG appoints local public guardian offices to provide guardianship services to people who have neither adequate income nor assets to afford a private guardian, nor any willing family or friend to serve.³³

There are 17 public guardian offices that serve all 67 counties.³⁴ Since 2016, approximately 550 professional guardians have registered with the OPPG.³⁵

Florida’s Adult Protective Services System

Chapter 415, F.S., creates Florida’s Adult Protective Services (APS)³⁶ under the Department of Children and Families (the DCF). The DCF protects vulnerable adults,³⁷ including elders, from abuse, neglect, and exploitation through mandatory reporting and investigation of suspected abuse.³⁸ This includes deaths allegedly due to abuse, neglect, and exploitation.³⁹ In 2022, the DCF received and investigated 30,581 reports of abuse, neglect, or exploitation of persons aged 60 years or older.⁴⁰

Central Abuse Hotline

The DCF maintains a statewide 24/7 toll-free central abuse hotline where anyone can report known or suspected abuse, neglect, or exploitation.⁴¹ This includes, but is not limited to, vulnerable adults. Any person that knows or has reasonable cause to suspect abuse, neglect, or exploitation of a vulnerable adult is required to immediately report this knowledge or suspicion to the central abuse hotline.⁴² The hotline number must be provided to clients in nursing homes⁴³

³¹ Chapter 99-277, L.O.F.

³² Chapter 2016-40, L.O.F.

³³ The DOEA, *Office of Public and Professional Guardians*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited February 7, 2023).

³⁴ The DOEA, *Office of Public and Professional Guardians (OPPG)*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited February 7, 2023).

³⁵ *Id.*

³⁶ Section 415.101(1), F.S.

³⁷ A vulnerable adult is a person 18 years of age or older whose ability to perform normal activities of daily living or to provide for his or her own care or protection is impaired due to mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. Section 415.102(28), F.S.

³⁸ Section 415.101(2), F.S.

³⁹ The Department of Children and Families (the DCF), *CF Operating Procedure No. 140-2: Adult Protective Services*, October 11, 2022, pp. 4-9 - 4-10, https://www.myflfamilies.com/sites/default/files/2022-12/cfop_140-02_adult_protective_services.pdf (last visited March 28, 2023) (hereinafter, cited as “DCF CFOP”).

⁴⁰ E-mail from Tarah Yeager, DCF Gubernatorial Fellow, March 22, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁴¹ Section 415.103(1), F.S.

⁴² Section 415.1034(1), F.S.

⁴³ Section 408.810(5)(a)2., F.S.

and publicly displayed in every health facility licensed by the Agency for Health Care Administration (AHCA).⁴⁴ The number is also listed on the agency websites for the DCF, AHCA, and the DOEA.⁴⁵

Additionally, any person who is required to investigate allegations of abuse, neglect, or exploitation, and who has reasonable cause to suspect that a vulnerable adult died as result of such harm, must report that suspicion to the DCF, the appropriate medical examiner, and appropriate criminal justice agency.⁴⁶ Medical examiners in turn are required to consider this information in their cause of death determinations and report their findings to the DCF and the appropriate criminal justice agency and state attorney.⁴⁷

Protective Investigations

Once the DCF believes there is reasonable cause to suspect abuse or neglect of a vulnerable adult, an investigation must begin within 24 hours, to be conducted in cooperation with law enforcement and the state attorney.⁴⁸ The DCF investigators determine, among other things, whether the vulnerable adult is in need of services; whether there is evidence of abuse, neglect, or exploitation; the nature and extent of any harm; and what is necessary to ensure the victim's safety and well-being.⁴⁹ The DCF investigators must complete their investigations and submit their recommendations within 60 days of the initial report.⁵⁰ If the DCF determines that a victim is in need of protective services or supervision, it will provide or facilitate the provision of those services to the victim.⁵¹ If a victim dies during an open investigation, DCF investigators must verify the cause of death before closing the case to determine if the death was related to abuse or neglect.⁵²

If there is a report that a death occurred due to elder abuse, neglect, or exploitation, the DCF investigator notifies the DCF's registered nurse specialist (RNS) staffing his or her region within 24 hours. If the alleged victim resided with other vulnerable adults, the DCF conducts an on-site investigation to ensure the safety of these individuals as well.⁵³

The DCF investigator and RNS work together to gather all relevant medical investigative information, including but not limited to medical records, the death certificate, the autopsy report, and specific questions to be included in the investigative process.⁵⁴ The DCF

⁴⁴ Section 400.141(1)(m), F.S. The AHCA poster is available at https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Long_Term_Care/docs/Nursing_Homes/Posters/NURSING_HOME_POSTER_ENGLISH_LETTER.pdf (last visited March 28, 2023).

⁴⁵ The DCF, *Report Abuse Neglect or Exploitation*, available at <http://www.myflfamilies.com/service-programs/abuse-hotline/report-online>; the AHCA, *Complaint Administration Unit*, available at http://ahca.myflorida.com/MCHQ/Field_Ops/CAU.shtml; the DOEA, *Elder Protection Programs*, available at <https://elderaffairs.org/programs-services/elder-protection-programs/> (all sites last visited March 28, 2023).

⁴⁶ Section 415.1034(2), F.S.

⁴⁷ *Id.*

⁴⁸ Section 415.104(1), F.S.

⁴⁹ Section 415.104(3), F.S.

⁵⁰ Section 415.104(4), F.S.

⁵¹ Section 415.105(1), F.S.

⁵² DCF CFOP at p. 15-2.

⁵³ *Id.* at p. 21-1.

⁵⁴ *Id.* at p. 21-2.

investigators also gather other relevant information such as copies of any related law enforcement investigations; criminal history and abuse reports relating to the alleged perpetrator; and prior adult protective services records relating to the victim or perpetrator, including the facilities where the death occurred.⁵⁵

The DCF investigators review all of this information before making their determinations as to the cause of death and will summarize their findings in a report.⁵⁶ In these cases involving an elder abuse death, the DCF designates a second party to review the DCF investigators' findings before closing the case.⁵⁷ The second party reviews the investigation process to ensure that it was thorough and that all issues were properly addressed, reviews the reports for completeness and accuracy, and documents its review for DCF's records.⁵⁸

Guardianship

A guardian is someone who is appointed by the court to act on behalf of a ward (an individual who has been adjudicated incapacitated) regarding his or her person or property or both.⁵⁹ The process to determine an individual's incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the rights the alleged incapacitated person is incapable of exercising.⁶⁰ Once a person has been adjudicated incapacitated (termed a "ward"), the court appoints a guardian, and the letters of guardianship are issued.⁶¹ The order appointing a guardian must be consistent with the ward's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the ward the right to make decisions in all matters commensurate with his or her ability to do so.⁶²

Elder Abuse Fatality Review Teams

Beginning in 2020, Florida law has authorized the creation of elder abuse fatality review teams (EA-FRTs).⁶³

A state attorney, or his or her designee, may initiate an elder abuse fatality review team in his or her judicial circuit to review deaths of elderly persons caused by, or related to, abuse or neglect.⁶⁴ EA-FRTs may include, but need not be limited to, representatives from any of the following entities or persons located in the review team's judicial circuit:

- Law enforcement agencies.
- The state attorney.
- The medical examiner.
- A county court judge.

⁵⁵ *Id.*

⁵⁶ *Id.*, at pp. 21-2 - 21-3

⁵⁷ *Id.* at p. 21-3.

⁵⁸ *Id.*

⁵⁹ Section 744.102(9), F.S.

⁶⁰ Section 744.3201(2), F.S.

⁶¹ Sections 744.3371-744.345, F.S.

⁶² Section 744.2005, F.S.

⁶³ Chapter 2020-17, L.O.F.

⁶⁴ Section 415.1103(1)(a), F.S.

- Adult protective services.
- The area agency on aging.
- The State Long-Term Care Ombudsman Program.
- The Agency for Health Care Administration.
- The Office of the Attorney General.
- The Office of the State Courts Administrator.
- The clerk of the court.
- A victim services program.
- An elder law attorney.
- Emergency services personnel.
- A certified domestic violence center.⁶⁵
- An advocacy organization for victims of sexual violence.
- A funeral home director.
- A forensic pathologist.
- A geriatrician.
- A geriatric nurse.
- A geriatric psychiatrist or other individual licensed to offer behavioral health services.
- A hospital discharge planner.
- A public guardian.⁶⁶
- Any other persons who have knowledge regarding fatal incidents of elder abuse, domestic violence, or sexual violence, including knowledge of research, policy, law, and other matters connected with such incidents involving elders, or who are recommended for inclusion by the review team.⁶⁷

Participation in an EA-FRT is voluntary; members serve 2-year terms, to be staggered as determined by the co-chairs, without compensation.⁶⁸ The state attorney of the relevant circuit calls the first organizational meeting of the team, during which two members are chosen to serve as co-chairs.⁶⁹ Members also establish schedules for future meetings at the initial meeting.⁷⁰ Chairs may be reelected by a majority vote of an EA-FRT for no more than two consecutive terms, and each team must meet at least once each fiscal year.⁷¹

Each EA-FRT determines its local operations, including, but not limited to, the process for case selection.⁷² The state attorney refers cases to be reviewed by each EA-FRT, with reviews limited

⁶⁵ Section 39.905, F.S. outlines requirements of certified domestic violence centers.

⁶⁶ The Office of Public & Professional Guardians (OPPG), housed within the DOEA, appoints local public guardians to provide guardianship services to persons who do not have adequate income or assets to afford a private guardian and there are no willing family or friends to serve. The OPPG contracts with 16 local Offices of Public Guardianship throughout Florida. See *The Office of Public and Professional Guardians (OPPG)*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/#:~:text=The%20Office%20of%20Public%20%26%20Professional,family%20or%20friends%20to%20serve> (last visited March 30, 2023).

⁶⁷ Section 415.1103(1)(b), F.S.

⁶⁸ Section 415.1103(1)(c), F.S.

⁶⁹ Section 415.1103(1)(d), F.S.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Section 415.1103(1)(e), F.S.

to closed cases⁷³ in which an elderly person's death was caused by, or related to, abuse or neglect.⁷⁴ All identifying information concerning the elderly person must be redacted by the state attorney in documents received for review.⁷⁵ Administrative costs of operating the EA-FRT must be borne by the team members or entities they represent.⁷⁶

EA-FRTs are required to do all of the following:

- Review deaths of elderly persons in the team's judicial circuit which are found to have been caused by, or related to, abuse or neglect;
- Take into consideration the events leading up to a fatal incident, available community resources, current law and policies, and the actions taken by systems or individuals related to the fatal incident;
- Identify potential gaps, deficiencies, or problems in the delivery of services to elderly persons by public and private agencies which may be related to deaths reviewed by the EA-FRT;
- Whenever possible, develop communitywide approaches to address the causes of, and contributing factors to, deaths reviewed by the EA-FRT; and
- Develop recommendations and potential changes in law, rules, and policies to support the care of elderly persons and to prevent elder abuse deaths.⁷⁷

An EA-FRT may share any relevant information that pertains to the review of the death of an elderly person with other review teams throughout Florida.⁷⁸ An EA-FRT member may not contact, interview, or obtain information by request directly from a member of the deceased elder's family as part of the review unless a team member is authorized to do so in the course of his or her employment duties.⁷⁹ A member of the deceased elder's family may voluntarily provide information or any record to an EA-FRT but must be informed that such information or any record is subject to public disclosure unless a public records exemption applies.⁸⁰

Annually by September 1, each EA-FRT is required to submit a summary report to the DOEA which includes, but is not limited to:

- Descriptive statistics regarding cases reviewed by the team, including demographic information on victims and the causes and nature of their deaths;
- Current policies, procedures, rules, or statutes the review team has identified as contributing to the incidence of elder abuse and elder deaths, and recommendations for system

⁷³ The term "closed case" means a case that does not involve information considered active as defined in s. 119.011(3)(d), F.S. Section 119.011(3)(d), F.S., defines "active" to mean criminal intelligence information which is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Criminal investigative information must be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. In addition, criminal intelligence and criminal investigative information must be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" does not apply to information in cases which are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Section 415.1103(1)(f), F.S.

⁷⁷ Section 415.1103(3), F.S.

⁷⁸ Section 415.1103(4)(a), F.S.

⁷⁹ Section 415.1103(4)(b), F.S.

⁸⁰ *Id.*

improvements and needed resources, training, or information dissemination to address such identified issues; and

- Any other recommendations to prevent deaths from elder abuse or neglect, based on an analysis of the data and information presented in the report.⁸¹

Annually by November 1, the DOEA is required to prepare a summary report of the EA-FRT information submitted.⁸² The DOEA must submit its summary report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the DCF.⁸³

Members of EA-FRTs do not incur any monetary or civil liability as a result of the performance of their duties as a review team member in regard to any discussions by, or deliberations or recommendations of, the team or the member unless such member acted in bad faith, with wanton and willful disregard of human rights, safety, or property.⁸⁴

Active EA-FRTs

There are currently two EA-FRTs in Florida: one in the 4th Judicial Circuit⁸⁵ and the other in the 5th Judicial Circuit.⁸⁶ The 4th Circuit team reviews cases in Clay, Duval, and Nassau counties and considers case facts that led to the fatal incident — this includes community resources, current laws and policies, and actions taken by systems or individuals.⁸⁷ The 5th Circuit team reviews cases in Citrus, Hernando, Lake, Marion, and Sumter Counties.⁸⁸

The 4th Circuit EA-FRT submitted their second annual report to the DOEA in September 2022. The 4th Circuit EA-FRT spent much of its inaugural year training members and implementing appropriate case selection and review procedures.⁸⁹ According to the team, when it came time for actual case selections and reviews the 4th Circuit EA-FRT encountered several unanticipated challenges, which ultimately prevented the team from effectively conducting any fatality case reviews in 2021.⁹⁰ The report detailed these challenges in the following reported findings:

- Finding # 1: The current language provided in s. 415.1103, F.S., inhibits effective case identification and significantly restricts the case selection process for elder abuse fatality review teams;
- Finding # 2: The current language provided in s. 415.1103, F.S., prevents the EA-FRT from locating, identifying, and requesting records from sources other than the SAO, and places an undue burden upon the SAO with respect to records productions;

⁸¹ Section 415.1103(5)(a), F.S.

⁸² *Id.*

⁸³ Section 415.1103(5)(b), F.S.

⁸⁴ Section 415.1103(6), F.S.

⁸⁵ Office of the State Attorney for the Fourth Judicial Circuit, *Elder Abuse Fatality Review Team (EA-FRT)*, available at <https://sao4th.com/resources/for-the-public/elder-abuse-fatality-review-team-eafrt/> (last visited March 28, 2023) (hereinafter cited as, “The 4th Circuit EA-FRT Page”).

⁸⁶ Office of the State Attorney for the Fifth Judicial Circuit, *State Attorney Creates Elder Abuse Fatality Review Team*, available at <https://www.sao5.org/State-Attorney-Creates-Elder-Abuse-Fatality-Review-Team-1-9147.html> (last visited March 28, 2023) (hereinafter cited as, “The 5th Circuit EA-FRT Page”).

⁸⁷ The 4th Circuit EA-FRT Page.

⁸⁸ The 5th Circuit EA-FRT Page.

⁸⁹ The 4th Judicial Circuit EAFRT, *Second Annual Report to the Department of Elder Affairs* at p. 6, available at [EAFRT-Second-Annual-Report-2022.pdf](https://sao4th.com/Second-Annual-Report-2022.pdf) (sao4th.com) (last visited March 28, 2023).

⁹⁰ *Id.*

- Finding # 3: The lack of public records exemptions limits what information may be reviewed and held by the EA-FRT for review;
- Finding # 4: The public meeting requirements under Sunshine Law prevents the EA-FRT from thoroughly discussing case information or conducting meaningful case reviews; and
- Finding # 5: As noted in the First Annual EA-FRT Report (2021), exploitation is a form of elder abuse, which may contribute to a vulnerable, older adult victim's death.⁹¹

In an attempt to address the issues identified above, the report included a number of legislative recommendations, including:

- Amending s. 415.1103, F.S., to allow all members of the team to identify and refer cases for fatality review by the EA-FRT;
- Amending s. 415.1103, F.S., to allow any member of the EA-FRT to contribute relevant case-related records accessible to him or her through the agency or organization the member represents on the team (so long as permitted by Florida law and agency rules or standards), as well as to allow the EA-FRT to request any additional records necessary to conducting a fatality case review;
- The adoption of new or amended legislation to add all public records law exemptions necessary to protecting the confidentiality and integrity of case-related information and victim information;
- The adoption of new or amended legislation exempting all EA-FRT's from Sunshine Law public meeting requirements for any meeting at which specific case review information is anticipated to be discussed; and
- Amending s. 415.1103, F.S., to add exploitation to the listed maltreatments-related to a victim's death, which would authorize a fatality case review by the EA-FRT.⁹²

Florida's Domestic Violence Fatality Review Teams

Florida law also authorizes Domestic Violence Fatality Review Teams (DV-FRT), which are multidisciplinary teams that review fatal and near-fatal incidents of domestic violence, related domestic violence matters, and suicides.⁹³ DV-FRTs can be established at the local, regional, or state level.⁹⁴ The DV-FRTs are assigned to the DCF for administrative purposes only, so the structure and activities of a team are determined at the local level.⁹⁵

The DV-FRTs have a similar membership to the EA-FRTs and include, but are not limited to, representatives from the following agencies or organizations:

- Law enforcement agencies;
- The state attorney's office;
- The medical examiner's office;
- Certified domestic violence centers;
- Child protection service providers;
- The office of the court administration;

⁹¹ *Id.* at p. 17-18.

⁹² *Id.* at p. 19.

⁹³ Section 741.316(1), F.S.

⁹⁴ Section 741.316(2), F.S.

⁹⁵ Sections 741.316(5) and 741.316(2), F.S.

- The clerk of the court;
- Victim services programs;
- Child death review teams;
- Members of the business community;
- County probation or corrections agencies; and
- Any other persons who have knowledge regarding domestic violence fatalities, nonlethal incidents of domestic violence or suicide, including research, policy, law or other related matters.⁹⁶

The DV-FRTs review events leading up to the domestic violence incident, available community resources, current laws and policies, actions taken by systems and individuals related to the incident and parties, and any information or action deemed relevant by the team.⁹⁷ The teams' purpose is to learn how to prevent domestic violence by intervening early and improving the response of an individual and the system to domestic violence.⁹⁸ Each team determines the number and type of incidents it will review and makes policy and other recommendations as to how incidents of domestic violence may be prevented.⁹⁹

Active DV-FRTs

As of 2019, there were 25 local DV-FRTs and one statewide team.¹⁰⁰ In the past, reviews have revealed that 26% percent of those committing the homicides in domestic violence cases were known to have exhibited alleged stalking behavior.¹⁰¹ There were known allegations of death threats made by the perpetrator toward the decedent in more than 50% of the reviewed fatalities, and 17% were known to have made previous attempts to kill the decedent.¹⁰² Reviewers identified that nearly 70% of perpetrators had a known prior history of committing acts of domestic violence against the decedent, and that 77% of perpetrators had a known history of substance abuse.¹⁰³

III. Effect of Proposed Changes:

The bill changes the name of s. 415.1103, F.S., from “Elder abuse fatality review teams” to “Elder abuse and vulnerable adult abuse fatality review teams” (EV-FRTs). The bill provides that the purpose of the EV-FRTs is to learn how to prevent abuse and abuse-related deaths of elderly persons and otherwise vulnerable adults by intervening early and to improve the system response to instances of such abuse, exploitation, or neglect.

⁹⁶ Section 741.316(1), F.S.

⁹⁷ Section 741.316(2), F.S.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Report of the Attorney General’s Statewide Domestic Violence Fatality Review Team, *Faces of Fatality*, Vol. IX, June 2019, at p. 4, available at <https://www2.myflfamilies.com/service-programs/domestic-violence/docs/FACES%20OF%20FATALITY%20IX.pdf> (last visited March 28, 2023).

¹⁰¹ *Id.* at p. 5.

¹⁰² *Id.*

¹⁰³ *Id.* at p. 4.

The bill provides a definition for the term “vulnerable adult” applicable to ss. 415.1103 and 415.104, F.S. The term includes a disabled adult and elderly person as those terms are defined in ss. 825.101(3)¹⁰⁴ and (4),¹⁰⁵ F.S.

Establishment and Membership of the EV-FRT

The bill allows EV-FRTs to be established at the local, regional, or state level to review fatal and near-fatal incidents of abuse, exploitation, or neglect of elderly persons and vulnerable adults. In this regard, the bill expands the scope of the types of incidents that can be reviewed by authorizing EV-FRTs to review “near fatal” as well as fatal incidents, and incidents which are the result of exploitation in addition to abuse and neglect.

The bill allows the following persons or entities to initiate an EV-FRT:

- A state attorney, or his or her designee;
- A law enforcement agency;
- The Department of Children and Families (the DCF);
- The Office of the Attorney General; and
- The Agency for Persons with Disabilities (the APD).

The bill requires the person or entity who initiates an EV-FRT to specify the geographic area in which the team will serve. The bill also removes the requirement that teams be initiated by the state attorney or their designee in the state attorney’s judicial circuit.

The bill modifies the above-described list of enumerated entities that are currently authorized to serve on the EV-FRT. Specifically, the bill adds a disability rights attorney to the list of entities and persons who may be included on an EV-FRT, removes a representative of adult protective services, and modifies one of the authorized enumerated representatives from “any other persons who have knowledge regarding fatal incidents of elder abuse, domestic violence, or sexual violence, including knowledge of research, policy, law, and other matters connected with such incidents involving elders, or who are recommended for inclusion by the review team” to “any other persons who are identified and invited by the team, and who have knowledge regarding fatal or near-fatal incidents of elder abuse, vulnerable adult abuse, domestic violence, sexual violence, or suicide, including knowledge of research, policy, law, and other matters connected with such incidents involving elderly persons and vulnerable adults.”

The bill no longer requires team members to serve staggered, 2-year terms, and removes the requirement for members to choose chairs and establish a schedule for future meetings. Additionally, the state attorney is no longer required to call the first organizational meeting of the team and does not substitute any other government or other specified entity as an authorized

¹⁰⁴ Section 825.101(3), F.S., defines a “disabled adult” to mean a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

¹⁰⁵ Section 825.101(4), F.S., defines an “elderly person” to mean a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired.

team initiator. The bill also removes the requirement that teams meet at least once each fiscal year.

Purview of Review for the EV-FRT

With limited exception, the bill tasks the members of the EV-FRT with determining the structure, local operations, and activities of the team, including the number and type of incidents it chooses to review.

The bill requires EV-FRTs to review cases within the team's jurisdiction, rather than in its judicial circuit as under current law. It also specifically adds exploitation to the list of causes of death which can merit review. The bill specifies that EV-FRTs may review any information the team deems relevant, including a review of public records and records for which a public records exemption is granted, if available to the team. The tied bill, SB 1542, allows EV-FRTs to access public records. The bill deletes the provision that restricted teams to reviewing only closed cases that have been referred and redacted by the state attorney.

Confidentiality of Records Reviewed by EV-FRT

The bill mirrors provisions of the law governing domestic violence fatality review teams (s. 741.316, F.S.), specifically that all oral or written communications, information or records produced or acquired by an EV-FRT are not subject to disclosure, discovery, or introduction into evidence in any civil or criminal action or administrative or disciplinary proceeding by any department or employing agency if the information or records arose out of matters that are the subject of evaluation and review by the EV-FRT.

The bill requires each member of an EV-FRT to sign a confidentiality agreement acknowledging the requirement to protect from unauthorized disclosure any confidential and exempt oral or written communications, information, or records produced or acquired by the review team. Any EV-FRT member who knowingly and willfully discloses such communications, information, or records commits a second degree misdemeanor punishable as provided in ss. 775.082 and 775.083, F.S. The bill requires confidentiality agreements to reference these criminal penalties.

The bill clarifies that oral or written communications, information, documents, and records otherwise available from other sources are not immune from discovery or introduction into evidence solely because the information, documents, or records were presented to or reviewed by a team.

A person who has attended a meeting or other authorized activity of a review team may not testify in any civil, criminal, administrative, or disciplinary proceedings as to any oral or written communications, records or information produced or presented to the team during meetings or other activities authorized for the EV-FRT. The bill also clarifies that any person who testifies before an EV-FRT or who is a member of an EV-FRT is still permitted to testify as to matters otherwise within his or her knowledge. The bill also clarifies that there is no monetary liability on the part of any person acting as a witness to, incident reporter to, or investigator for an EV-FRT, for any act or proceeding taken or performed within the scope and functions of the team,

unless such person acted in bad faith, with wanton and willful disregard of human rights, safety, or property.

Miscellaneous Provisions

The bill clarifies that elder abuse fatality review teams in existence on the bill's effective date may continue to exist and must comply with the provisions of the bill.

The bill makes conforming changes in the remainder of s. 415.1103, F.S., to align with the changes relating to the scope of the review teams, and limits the circumstances under which members of a team may directly contact members of a deceased elder's family. Specifically, a member of an EV-FRT may not contact, interview, or obtain information by request directly from a team member as part of the review unless:

- A team member is authorized to do so in the course of his or her employment duties; or
- Such contact, interview, or request is necessary for the EV-FRT to complete its review and determine findings and such information is not obtainable through any other means.

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Elder Affairs (DOEA) anticipates that the bill will not have an impact on the agency.¹⁰⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 415.1103 of the Florida Statutes.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs Committee on April 4, 2023

The Committee Substitute:

- Clarifies that review teams may be established at the local, regional, or state level to review incidents of abuse, exploitation, or neglect of elderly persons and vulnerable adults believed to have caused or contributed to a fatal or near-fatal incident.
- Restricts the entities capable of initiating a review team to specified governmental entities.
- Requires review teams to include a representative from the person or entity initiating the team, who must be an active participant on the team.
- Specifies that a review team may include persons or entities who may initiate a team and a number of specified persons or entities. The amendment specifically removes adult protective services and adds a disability rights attorney to the list, and clarifies that outside of the enumerated list, only other persons who are both identified and invited by the team and have the requisite knowledge of fatal or near-fatal incidents, may be a part of the team.
- Clarifies that the structure, local operations, and activities of a review team, including the number and type of incidents it chooses to review, are determined by the team members.

¹⁰⁶ The DOEA, *Statement on SB 1540*, March 9, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).

- Requires each member of a review team to sign a confidentiality agreement acknowledging the requirement to protect from unauthorized disclosure any confidential and exempt oral or written communications, information, or records produced or acquired by the review team.
- Any review team member who knowingly and willfully discloses such communications, information, or records commits a second degree misdemeanor. The amendment requires confidentiality agreements to reference the criminal penalties.
- Restores from current law a prohibition on review teams contacting family members as part of the review. The amendment specifies that review team members may only contact, interview, or obtain information from members of the family of the individual in specified instances.
- Clarifies that there is no monetary liability on the part of any person acting as a witness to, incident reporter to, or investigator for an EV-FRT, for any act or proceeding taken or performed within the scope and functions of the team, unless such person acted in bad faith, with wanton and willful disregard of human rights, safety, or property.
- Specifies that oral or written communications, information, and records produced or acquired by the review team and are not subject to disclosure, discovery, or introduction into evidence in any civil, criminal, administrative, or disciplinary proceeding, if the communications, information, or records arose out of matters that are the subject of an evaluation and review by the team.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and
Senator Garcia

586-03510-23

20231540c1

A bill to be entitled

An act relating to elder abuse and vulnerable adult abuse fatality review teams; amending s. 415.1103, F.S.; authorizing the establishment of elder abuse and vulnerable adult abuse fatality review teams in certain areas and for certain purposes; authorizing certain persons and entities to initiate a review team; defining the term "vulnerable adult"; requiring certain representatives to be active participants on a review team; revising review team membership; removing provisions relating to state attorney requirements; authorizing a review team to determine the number and types of incidents to review; requiring members of a review team to sign a confidentiality agreement; creating a criminal penalty; requiring confidentiality agreements to reference such criminal penalty; authorizing continuance for review teams in existence on a certain date; revising review team requirements to conform to changes made by the act; modifying a prohibition against contacting, interviewing, or obtaining information from the family of a victim; expanding immunity from monetary liability to certain persons; providing construction; providing that oral and written communications, information, and records acquired by a review team are not subject to disclosure, discovery, or introduction into evidence in certain proceedings under certain circumstances; specifying that provisions of law relating to a waiver of sovereign immunity still apply; providing that a

Page 1 of 9

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

586-03510-23

20231540c1

person who attends a meeting or other authorized activities of a review team may not testify in certain proceedings; providing exceptions and construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 415.1103, Florida Statutes, is amended to read:

415.1103 Elder abuse and vulnerable adult abuse fatality review teams.—

(1) (a) An elder abuse or a vulnerable adult ~~A state attorney, or his or her designee, may initiate an elder abuse fatality review team~~ may be established at a local, regional, or state level in his or her judicial circuit to review incidents of abuse, exploitation, or neglect of elderly persons and vulnerable adults which are believed to have caused or contributed to a fatal or near-fatal incident ~~deaths of elderly persons caused by, or related to, abuse or neglect.~~

(b) 1. An elder abuse or vulnerable adult abuse fatality review team may be initiated by any of the following persons or entities:

a. A state attorney, or his or her designee.

b. A law enforcement agency.

c. The Department of Children and Families.

d. The Office of the Attorney General.

e. The Agency for Persons with Disabilities.

2. The person or entity who initiates a review team under this paragraph must specify the geographic area in which the

Page 2 of 9

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

586-03510-23

20231540c1

59 team shall serve.

60 (c) The purpose of a review team is to learn how to prevent
 61 elder and vulnerable adult abuse and abuse-related deaths by
 62 intervening early and improving the system response to elder and
 63 vulnerable adult abuse, exploitation, or neglect.

64 (2) For purposes of this section, the term "vulnerable
 65 adult" includes a disabled adult and elderly person as those
 66 terms are defined in s. 825.101(3) and (4), respectively.

67 (3) (a) ~~(b)~~ A An elder abuse fatality review team must may
 68 include a representative from the person or entity initiating
 69 the team, who must be an active participant on the team.

70 (b) A review team may include, but is not limited to,
 71 representatives from any of the persons or entities that may
 72 initiate a team under paragraph (1) (b) and any of the following
 73 persons or entities or persons located in the review team's
 74 judicial circuit:

75 1. Law enforcement agencies.

76 2. The state attorney.

77 3. The medical examiner.

78 2.4- A county court judge.

79 5. Adult protective services.

80 3.6- The area agency on aging.

81 4.7- The State Long-Term Care Ombudsman Program.

82 5.8- The Agency for Health Care Administration.

83 9. The Office of the Attorney General.

84 6.10- The Office of the State Courts Administrator.

85 7.11- The clerk of the court.

86 8.12- A victim services program.

87 9.13- An elder law or disability rights attorney.

586-03510-23

20231540c1

88 10.14- Emergency services personnel.

89 11.15- A certified domestic violence center.

90 12.16- An advocacy organization for victims of sexual
 91 violence.

92 13.17- A funeral home director.

93 14.18- A forensic pathologist.

94 15.19- A geriatrician.

95 16.20- A geriatric nurse.

96 17.21- A geriatric psychiatrist or other individual
 97 licensed to offer behavioral health services.

98 18.22- A hospital discharge planner.

99 19.23- A public guardian.

100 20.24- Any other persons who are identified and invited by
 101 the team, and who have knowledge regarding fatal or near-fatal
 102 incidents of elder abuse, vulnerable adult abuse, domestic
 103 violence, or sexual violence, or suicide, including knowledge of
 104 research, policy, law, and other matters connected with such
 105 incidents involving vulnerable adults or elderly persons elders,
 106 or who are recommended for inclusion by the review team.

107 (4) (a) ~~(e)~~ Participation in a review team is voluntary.

108 Members of a review team shall serve without compensation and
 109 may not be reimbursed for per diem or travel expenses. Members
 110 shall serve for terms of 2 years, to be staggered as determined
 111 by the co-chairs.

112 ~~(d) The state attorney may call the first organizational~~
 113 ~~meeting of the team. At the initial meeting, members of a review~~
 114 ~~team shall choose two members to serve as co-chairs. Chairs may~~
 115 ~~be reelected by a majority vote of a review team for not more~~
 116 ~~than two consecutive terms. At the initial meeting, members of a~~

586-03510-23

20231540c1

review team shall establish a schedule for future meetings. Each review team shall meet at least once each fiscal year.

~~(e) Each review team shall determine its local operations, including, but not limited to, the process for case selection. The state attorney shall refer cases to be reviewed by each team. Reviews must be limited to closed cases in which an elderly person's death was caused by, or related to, abuse or neglect. All identifying information concerning the elderly person must be redacted by the state attorney in documents received for review. As used in this paragraph, the term "closed case" means a case that does not involve information considered active as defined in s. 119.011(3)(d).~~

(b) Except as provided in subparagraph (1)(b)2., a review team may determine its structure, local operations, and activities, including the number and type of incidents it chooses to review.

~~(c)(f)~~ Administrative costs of operating the review team must be borne by the team members or entities they represent.

(d) Each member of a review team must sign a confidentiality agreement acknowledging the requirement to protect confidential and exempt oral or written communications, information, or records produced or acquired by the review team from unauthorized disclosure. A review team member who knowingly and willfully discloses confidential and exempt oral or written communications, information, or records produced or acquired by the review team commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The confidentiality agreement must reference such penalties.

(5)(2) A An elder abuse fatality review team in existence

586-03510-23

20231540c1

on July 1, 2023 ~~July 1, 2020~~, may continue to exist and must comply with the requirements of this section.

~~(6)(3) A~~ An elder abuse fatality review team must ~~shall~~ do all of the following:

(a) Review incidents deaths of abuse, exploitation, or neglect of elderly persons and vulnerable adults in the team's jurisdiction in its judicial circuit which are believed found to have ~~been~~ caused or contributed to a fatal or near-fatal incident by, or related to, abuse or neglect.

(b) Take into consideration the events leading up to a fatal or near-fatal incident, available community resources, current law and policies, ~~and~~ the actions taken by systems or individuals related to the fatal or near-fatal incident, and any information considered relevant by the team, including a review of public records and records for which a public records exemption is granted.

(c) Identify potential gaps, deficiencies, or problems in the delivery of services to elderly persons or vulnerable adults by public and private agencies which may be related to incidents deaths reviewed by the team.

(d) Whenever possible, develop communitywide approaches to address the causes of, and contributing factors to, incidents deaths reviewed by the team.

(e) Develop recommendations and potential changes in law, rules, and policies to support the care of elderly persons and vulnerable adults and to prevent abuse-related incidents elder abuse deaths.

~~(7)(a)(4)(a)~~ A review team may share with other review teams in this state any relevant information that pertains to

586-03510-23

20231540c1

incidents identified or reviewed by the team ~~the review of the~~
~~death of an elderly person.~~

(b) ~~1. (b)~~ A review team member may not contact, interview,
 or obtain information by request directly from a member of the
elder or vulnerable adult's deceased elder's family as part of
 the review unless:

a. A team member is authorized to do so in the course of
 his or her employment duties; or

b. Such contact, interview, or request is necessary for the
review team to complete its review and determine findings and
such information is not obtainable through any other means.

2. A member of the elder or vulnerable adult's deceased
~~elder's~~ family may voluntarily provide information or any record
 to a review team but must be informed that such information or
 any record is subject to public disclosure unless a public
 records exemption applies.

(8) (a) ~~(5) (a)~~ Annually by September 1, each ~~elder abuse~~
~~fatality~~ review team shall submit a summary report to the
 Department of Elderly Affairs which includes, but is not limited
 to:

1. Descriptive statistics regarding cases reviewed by the
 team, including demographic information on victims and the
 causes and nature of their fatal or near-fatal incidents of
abuse, exploitation, or neglect. ~~deaths.~~

2. Current policies, procedures, rules, or statutes the
 review team has identified as contributing to the incidence of
elder or vulnerable adult abuse and abuse-related elder deaths,
 and recommendations for system improvements and needed
 resources, training, or information dissemination to address

586-03510-23

20231540c1

such identified issues. ~~7 and~~

3. Any other recommendations to prevent fatal or near-fatal
incidents ~~deaths~~ from ~~elder~~ abuse, exploitation, or neglect,
 based on an analysis of the data and information presented in
 the report.

(b) Annually by November 1, the Department of Elderly
 Affairs shall prepare a summary report of the review team
 information submitted under paragraph (a). The department shall
 submit its summary report to the Governor, the President of the
 Senate, the Speaker of the House of Representatives, and the
 Department of Children and Families.

(9) (a) ~~(6)~~ There is no monetary liability on the part of,
 and a cause of action for damages may not arise against, any
 member of a an elder abuse fatality review team, or any person
 acting as a witness to, incident reporter to, or investigator
 for a review team, for any act or proceeding taken or performed
 within the scope and functions of the team, due to the
~~performance of his or her duties as a review team member in~~
~~regard to any discussions by, or deliberations or~~
~~recommendations of, the team or the member~~ unless such person
~~member~~ acted in bad faith, with wanton and willful disregard of
 human rights, safety, or property.

(b) This subsection does not affect the requirements of s.
768.28.

(10) (a) Oral or written communications, information, and
records produced or acquired by the review team are not subject
to disclosure, discovery, or introduction into evidence in any
civil, criminal, administrative, or disciplinary proceeding if
the communications, information, or records arose out of matters

586-03510-23

20231540c1

233 that are the subject of an evaluation and review by the review
234 team. However, information, documents, and records otherwise
235 available from other sources are not immune from discovery or
236 introduction into evidence solely because the information,
237 documents, or records were presented to or reviewed by a review
238 team.

239 (b) A person who attends a meeting or other authorized
240 activity of a review team may not testify in any civil,
241 criminal, administrative, or disciplinary proceedings as to any
242 records or information produced or presented to the review team
243 during its meetings or other activities authorized by this
244 section.

245 (c) This subsection does not prohibit:

246 1. A person who testifies before a review team or is a
247 member of a review team from testifying in a civil, criminal,
248 administrative, or disciplinary proceeding to matters otherwise
249 within his or her knowledge; or

250 2. A member of a review team from testifying in a policy-
251 related hearing or matter, as long as the member of the review
252 team does not disclose records or information that would
253 identify the victim or victim's family or any other confidential
254 or exempt records or information pertaining to a matter reviewed
255 by the review team.

256 Section 2. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Gayle Harrell, Chair
Appropriations Committee on Health and Human Services

Subject: Committee Agenda Request

Date: April 4, 2023

I respectfully request that **Senate Bill #1540**, relating to Elder Abuse and Vulnerable Adult Abuse Fatality Review Teams, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Ileana Garcia", is written over a horizontal line.

Senator Ileana Garcia
Florida Senate, District 36

4.18.23

Meeting Date

Appropriations Committee on Health and Human Services

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1540

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Greg Black**

Phone **8505098022**

Address **PO Box 838**

Email **Greg@WaypointStrat.com**

Street

Tallahassee

FL

32302

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Elder Law Section of the Florida Bar

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

Tab 8

4-18-23

Meeting Date

AHS

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1540

Bill Number or Topic

Amendment Barcode (if applicable)

850-443-0024

Name

Jason Hand

Phone

Address

2292 W. Highway St., Ste 1

Street

Tallahassee

City

FL

State

32308

Zip

Email

jhand@floridastudent.org

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida Senior Living Association

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

4/18/23

Meeting Date

1540

Bill Number or Topic

Tab 8

Appropriations Health & Human Services

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

AARP-Karen Murillo

Name

Phone

850-567-0414

215 S. Monroe St.

Address

Email

kmurillo@aarp.org

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

AARP

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

BILL: CS/SB 1542

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Garcia

SUBJECT: Public Records and Public Meetings/Elder Abuse or Vulnerable Adult Abuse Fatality Review Team

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Fav/CS
2.	Howard	Money	AHS	Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1542 creates public record and public meeting exemptions related to elder and vulnerable adult fatality review teams (EV-FRTs). Specifically, the bill requires that any information obtained by an EV-FRT for the purposes of conducting a case review which is exempt or confidential and exempt from public records requirements retains its exempt or confidential and exempt status when held by an EV-FRT. The bill also creates a public record exemption for records created or held by an EV-FRT which reveals the identity of a victim, the identity of persons responsible for the welfare of the victim, and such information is confidential and exempt under the bill.

Any information that is maintained as exempt or confidential and exempt within chapter 415, Florida Statutes, retains its exempt or confidential and exempt status when held by the review team.

The bill creates a public meeting exemption for portions of an EV-FRT meeting in which the identity of the victim, the identity of the person responsible for the welfare of the victim, or otherwise exempt or confidential and exempt information is discussed. Records created by an EV-FRT during such portions of meetings are also exempt from public disclosure.

The bill includes a public necessity statement and states that the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless saved from repeal by reenactment by the Legislature.

The bill has no fiscal impact on state government.

The bill will become effective on the same date that SB 1540 (2023) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person who acts on behalf of the government.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that:

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes that relate to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

Section 119.011(12), F.S., defines “public records” to include:

[a] ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity which justifies the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill that enacts an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violations of those laws.

⁹ FLA CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c)

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁹ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- The release of sensitive personal information would be defamatory or jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

Open Meeting Laws

The State Constitution provides that the public has a right to access governmental meetings.²⁶ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

²³ Section 119.15(6)(a), F.S. The specific questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁴ FLA. CONST., art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ FLA. CONST., art. I, s. 24(b).

discussed.²⁷ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.²⁸

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the “Government in the Sunshine Law,”²⁹ or the “Sunshine Law,”³⁰ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.³¹ The board or commission must provide the public reasonable notice of such meetings.³² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.³³ Minutes of a public meeting must be promptly recorded and open to public inspection.³⁴ Failure to abide by open meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.³⁵ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.³⁶

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of each house of the Legislature.³⁷ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.³⁸ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.³⁹

Elder Abuse Fatality Review Teams

Beginning in 2020, Florida law has authorized the creation of elder abuse fatality review teams (EA-FRTs).⁴⁰

²⁷ *Id.*

²⁸ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

²⁹ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

³⁰ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

³¹ Section 286.011(1)-(2), F.S.

³² *Id.*

³³ Section 286.011(6), F.S.

³⁴ Section 286.011(2), F.S.

³⁵ Section 286.011(1), F.S.

³⁶ Section 286.011(3), F.S.

³⁷ FLA. CONST., art. I, s. 24(c).

³⁸ *Id.*

³⁹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

⁴⁰ Chapter 2020-17, L.O.F.

A state attorney, or his or her designee, may initiate an elder abuse fatality review team in his or her judicial circuit to review deaths of elderly persons caused by, or related to, abuse or neglect.⁴¹ EA-FRTs may include, but need not be limited to, representatives from any of the following entities or persons located in the review team's judicial circuit:

- Law enforcement agencies.
- The state attorney.
- The medical examiner.
- A county court judge.
- Adult protective services.
- The area agency on aging.
- The State Long-Term Care Ombudsman Program.
- The Agency for Health Care Administration.
- The Office of the Attorney General.
- The Office of the State Courts Administrator.
- The clerk of the court.
- A victim services program.
- An elder law attorney.
- Emergency services personnel.
- A certified domestic violence center.⁴²
- An advocacy organization for victims of sexual violence.
- A funeral home director.
- A forensic pathologist.
- A geriatrician.
- A geriatric nurse.
- A geriatric psychiatrist or other individual licensed to offer behavioral health services.
- A hospital discharge planner.
- A public guardian.
- Any other persons who have knowledge regarding fatal incidents of elder abuse, domestic violence, or sexual violence, including knowledge of research, policy, law, and other matters connected with such incidents involving elders, or who are recommended for inclusion by the review team.⁴³

Participation in an EA-FRT is voluntary; members serve 2-year terms, to be staggered as determined by the co-chairs, without compensation.⁴⁴ The state attorney of the relevant circuit calls the first organizational meeting of the team, during which two members are chosen to serve as co-chairs.⁴⁵ Members also establish schedules for future meetings at the initial meeting.⁴⁶ Chairs may be reelected by a majority vote of an EA-FRT for no more than two consecutive terms, and each team must meet at least once each fiscal year.⁴⁷

⁴¹ Section 415.1103(1)(a), F.S.

⁴² Section 39.905, F.S. outlines requirements of certified domestic violence centers.

⁴³ Section 415.1103(1)(b), F.S.

⁴⁴ Section 415.1103(1)(c), F.S.

⁴⁵ Section 415.1103(1)(d), F.S.

⁴⁶ *Id.*

⁴⁷ *Id.*

Each EA-FRT determines its local operations, including, but not limited to, the process for case selection.⁴⁸ The state attorney refers cases to be reviewed by each EA-FRT, with reviews limited to closed cases⁴⁹ in which an elderly person's death was caused by, or related to, abuse or neglect.⁵⁰ All identifying information concerning the elderly person must be redacted by the state attorney in documents received for review.⁵¹ Administrative costs of operating the EA-FRT must be borne by the team members or entities they represent.⁵²

EA-FRTs are required to do all of the following:

- Review deaths of elderly persons in the team's judicial circuit which are found to have been caused by, or related to, abuse or neglect;
- Take into consideration the events leading up to a fatal incident, available community resources, current law and policies, and the actions taken by systems or individuals related to the fatal incident;
- Identify potential gaps, deficiencies, or problems in the delivery of services to elderly persons by public and private agencies which may be related to deaths reviewed by the EA-FRT;
- Whenever possible, develop communitywide approaches to address the causes of, and contributing factors to, deaths reviewed by the EA-FRT; and
- Develop recommendations and potential changes in law, rules, and policies to support the care of elderly persons and to prevent elder abuse deaths.⁵³

An EA-FRT may share any relevant information that pertains to the review of the death of an elderly person with other review teams throughout Florida.⁵⁴ An EA-FRT member may not contact, interview, or obtain information by request directly from a member of the deceased elder's family as part of the review unless a team member is authorized to do so in the course of his or her employment duties.⁵⁵ A member of the deceased elder's family may voluntarily provide information or any record to an EA-FRT but must be informed that such information or any record is subject to public disclosure unless a public records exemption applies.⁵⁶

Annually by September 1, each EA-FRT is required to submit a summary report to the Department of Elder Affairs (DOEA) which includes, but is not limited to:

⁴⁸ Section 415.1103(1)(e), F.S.

⁴⁹ The term "closed case" means a case that does not involve information considered active as defined in s. 119.011(3)(d), F.S. Section 119.011(3)(d), F.S., defines "active" to mean criminal intelligence information which is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Criminal investigative information must be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. In addition, criminal intelligence and criminal investigative information must be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" does not apply to information in cases which are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Section 415.1103(1)(f), F.S.

⁵³ Section 415.1103(3), F.S.

⁵⁴ Section 415.1103(4)(a), F.S.

⁵⁵ Section 415.1103(4)(b), F.S.

⁵⁶ *Id.*

- Descriptive statistics regarding cases reviewed by the team, including demographic information on victims and the causes and nature of their deaths;
- Current policies, procedures, rules, or statutes the review team has identified as contributing to the incidence of elder abuse and elder deaths, and recommendations for system improvements and needed resources, training, or information dissemination to address such identified issues; and
- Any other recommendations to prevent deaths from elder abuse or neglect, based on an analysis of the data and information presented in the report.⁵⁷

Annually by November 1, the DOEA is required to prepare a summary report of the EA-FRT information submitted.⁵⁸ The DOEA must submit its summary report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the DCF.⁵⁹

Members of EA-FRTs do not incur any monetary or civil liability as a result of the performance of their duties as a review team member in regard to any discussions by, or deliberations or recommendations of, the team or the member unless such member acted in bad faith, with wanton and willful disregard of human rights, safety, or property.⁶⁰

Active EA-FRTs

There are currently two EA-FRTs in Florida: one in the 4th Judicial Circuit⁶¹ and the other in the 5th Judicial Circuit.⁶² The 4th Circuit team reviews cases in Clay, Duval, and Nassau counties and considers case facts that led to the fatal incident — this includes community resources, current laws and policies, and actions taken by systems or individuals.⁶³ The 5th Circuit team reviews cases in Citrus, Hernando, Lake, Marion, and Sumter Counties.⁶⁴

The 4th Circuit EA-FRT submitted their second annual report to the DOEA in September 2022. The 4th Circuit EA-FRT spent much of its inaugural year training members and implementing appropriate case selection and review procedures.⁶⁵ According to the team, when it came time for actual case selections and reviews the 4th Circuit EA-FRT encountered several unanticipated challenges, which ultimately prevented the team from effectively conducting any fatality case reviews in 2021.⁶⁶ The report detailed these challenges in the following reported findings:

⁵⁷ Section 415.1103(5)(a), F.S.

⁵⁸ *Id.*

⁵⁹ Section 415.1103(5)(b), F.S.

⁶⁰ Section 415.1103(6), F.S.

⁶¹ Office of the State Attorney for the Fourth Judicial Circuit, *Elder Abuse Fatality Review Team (EA-FRT)*, available at <https://sao4th.com/resources/for-the-public/elder-abuse-fatality-review-team-eaftr/> (last visited March 28, 2023) (hereinafter cited as, “The 4th Circuit EA-FRT Page”).

⁶² Office of the State Attorney for the Fifth Judicial Circuit, *State Attorney Creates Elder Abuse Fatality Review Team*, available at <https://www.sao5.org/State-Attorney-Creates-Elder-Abuse-Fatality-Review-Team-1-9147.html> (last visited March 28, 2023) (hereinafter cited as, “The 5th Circuit EA-FRT Page”).

⁶³ The 4th Circuit EA-FRT Page.

⁶⁴ The 5th Circuit EA-FRT Page.

⁶⁵ The 4th Judicial Circuit EAFRT, *Second Annual Report to the Department of Elder Affairs* at p. 6, available at [EAFRT-Second-Annual-Report-2022.pdf \(sao4th.com\)](https://sao4th.com/Second-Annual-Report-2022.pdf) (last visited March 28, 2023).

⁶⁶ *Id.*

- Finding # 1: The current language provided in s. 415.1103, F.S., inhibits effective case identification and significantly restricts the case selection process for elder abuse fatality review teams;
- Finding # 2: The current language provided in s. 415.1103, F.S., prevents the EA-FRT from locating, identifying, and requesting records from sources other than the SAO, and places an undue burden upon the SAO with respect to records productions;
- Finding # 3: The lack of public records exemptions limits what information may be reviewed and held by the EA-FRT for review;
- Finding # 4: The public meeting requirements under Sunshine Law prevents the EA-FRT from thoroughly discussing case information or conducting meaningful case reviews; and
- Finding # 5: As noted in the First Annual EA-FRT Report (2021), exploitation is a form of elder abuse, which may contribute to a vulnerable, older adult victim's death.⁶⁷

In an attempt to address the issues identified above, the report included a number of legislative recommendations, including:

- Amending s. 415.1103, F.S., to allow all members of the team to identify and refer cases for fatality review by the EA-FRT;
- Amending s. 415.1103, F.S., to allow any member of the EA-FRT to contribute relevant case-related records accessible to him or her through the agency or organization the member represents on the team (so long as permitted by Florida law and agency rules or standards), as well as to allow the EA-FRT to request any additional records necessary to conducting a fatality case review;
- The adoption of new or amended legislation to add all public records law exemptions necessary to protecting the confidentiality and integrity of case-related information and victim information;
- The adoption of new or amended legislation exempting all EA-FRT's from Sunshine Law public meeting requirements for any meeting at which specific case review information is anticipated to be discussed; and
- Amending s. 415.1103, F.S., to add exploitation to the listed maltreatments-related to a victim's death, which would authorize a fatality case review by the EA-FRT.⁶⁸

Findings 3 and 4 of the 4th Circuit EAFRT

Due to the risk of revealing confidential and sensitive victim-related and case-related information, the 4th Circuit EAFRT states that it has been unable to possess or review any information from cases ripe for review unless it is completely redacted beforehand by the state attorney's office.⁶⁹ Additionally, the 4th Circuit EAFRT stated that given the sensitive and potentially inflammatory information that the EAFRT is responsible for reviewing in a fatality case review, all EAFRT meetings during which cases are reviewed should be confidential and closed to the public.⁷⁰ The EAFRT believes it would benefit from having the same public records and open meeting exemptions and victim confidentiality protections provided to domestic violence fatality review teams under ss. 741.316 and 741.3165.⁷¹

⁶⁷ *Id.* at p. 17-18.

⁶⁸ *Id.* at p. 19.

⁶⁹ *Id.* at p. 18.

⁷⁰ *Id.*

⁷¹ *Id.*

Florida's Domestic Violence Fatality Review Teams

Florida law also authorizes Domestic Violence Fatality Review Teams (DV-FRT), which are multidisciplinary teams that review fatal and near-fatal incidents of domestic violence, related domestic violence matters, and suicides.⁷² DV-FRTs can be established at the local, regional, or state level.⁷³ The DV-FRTs are assigned to the DCF for administrative purposes only, so the structure and activities of a team are determined at the local level.⁷⁴

The DV-FRTs have a similar membership to the EA-FRTs and include, but are not limited to, representatives from the following agencies or organizations:

- Law enforcement agencies;
- The state attorney's office;
- The medical examiner's office;
- Certified domestic violence centers;
- Child protection service providers;
- The office of the court administration;
- The clerk of the court;
- Victim services programs;
- Child death review teams;
- Members of the business community;
- County probation or corrections agencies; and
- Any other persons who have knowledge regarding domestic violence fatalities, nonlethal incidents of domestic violence or suicide, including research, policy, law or other related matters.⁷⁵

The DV-FRTs review events leading up to the domestic violence incident, available community resources, current laws and policies, actions taken by systems and individuals related to the incident and parties, and any information or action deemed relevant by the team.⁷⁶ The teams' purpose is to learn how to prevent domestic violence by intervening early and improving the response of an individual and the system to domestic violence.⁷⁷ Each team determines the number and type of incidents it will review and makes policy and other recommendations as to how incidents of domestic violence may be prevented.⁷⁸

Active DV-FRTs

As of 2019 there were 25 local DV-FRTs and one statewide team.⁷⁹ In the past reviews have revealed that 26 percent of those committing the homicides in domestic violence cases were

⁷² Section 741.316(1), F.S.

⁷³ Section 741.316(2), F.S.

⁷⁴ Sections 741.316(5) and 741.316(2), F.S.

⁷⁵ Section 741.316(1), F.S.

⁷⁶ Section 741.316(2), F.S.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Report of the Attorney General's Statewide Domestic Violence Fatality Review Team, *Faces of Fatality, Vol. IX*, June 2019, at p. 4, available at <https://www2.myflfamilies.com/service-programs/domestic-violence/docs/FACES%20OF%20FATALITY%20IX.pdf> (last visited March 28, 2023).

known to have exhibited alleged stalking behavior.⁸⁰ There were known allegations of death threats made by the perpetrator toward the decedent in more than 50 percent of the reviewed fatalities, and 17 percent were known to have made previous attempts to kill the decedent.⁸¹ Reviewers identified that nearly 70 percent of perpetrators had a known prior history of committing acts of domestic violence against the decedent, and that 77 percent of perpetrators had a known history of substance abuse.⁸²

III. Effect of Proposed Changes:

The bill creates both a public records exemption and a Sunshine Law exemption, for information held and reviewed by an elder or vulnerable adult abuse fatality review team (EV-FRT) and portions of public meetings of EV-FRTs, respectively.

The bill specifies that information that is exempt or confidential and exempt retains such status when held by an EV-FRT if the information is:

- Exempt or confidential and exempt from s. 119.07(1), F.S., and Article 1, s. 24(a) of the State Constitution; and
- Obtained by an EV-FRT while executing its duties under the bill.

The bill also creates a public records exemption for any information contained in a record created by an EV-FRT which reveals the identity of a victim of abuse, exploitation, or neglect or the identity of persons responsible for the welfare of a victim.

Additionally, any information maintained as exempt or confidential and exempt within ch. 415, F.S., retains such status while held by an EV-FRT.

The bill also exempts certain portions of EV-FRT meetings from the public meeting requirements of s. 286.011, F.S., and Article 1, s. 24(b) of the State Constitution. Specifically, the bill creates an exemption for portions of meetings relating to abuse, exploitation, or neglect or abuse-related deaths of elderly persons or otherwise vulnerable adults, and the prevention of such abuse, exploitation, neglect, or deaths, during which exempt or confidential and exempt information, information protected within ch. 415, F.S., the identity of the victim, or the identity of persons responsible for the welfare of the victim is discussed.

The public records and meetings exemptions created by the bill stand repealed on October 2, 2028, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

As it relates to the public records exemptions created in the bill, the bill includes legislative findings and a public necessity statement, specifying that information that is exempt or confidential and exempt from s. 119.07(1), F.S., and Article 1, s. 24(a) of the State Constitution remain exempt or confidential and exempt when held by an EV-FRT. The public necessity statement also provides that information which reveals the identity of a victim of elder or vulnerable adult abuse, exploitation, or neglect or the identity of persons responsible for the

⁸⁰ *Id.* at p. 5.

⁸¹ *Id.*

⁸² *Id.* at p. 4.

welfare of such victim must be confidential and exempt from public records requirements. The bill provides as a reason that the disclosure of such sensitive personal identifying information could hamper the open communication and coordination among the parties involved in the EV-FRT, and the harm that would result from the release of such information substantially outweighs any public benefit that would be achieved by disclosure.

The public necessity statement also addresses open meetings requirements, providing that it is a public necessity that portions of meetings of an EV-FRT during which exempt or confidential and exempt information, information protected within ch. 415, F.S., the identity of the victim, or the identity of persons responsible for the welfare of the victim is discussed, are exempt from s. 286.011, F.S., and Article 1, s. 24(b) of the State Constitution. The failure to close the portions of the meetings in which such sensitive personal information is discussed would defeat the purpose of the exemptions. The bill provides additional legislative findings, stating that the exemption is narrowly tailored to apply to only those portions of the meetings in which such sensitive personal identifying information is discussed and that the remainder of such meetings are to remain open to allow for public oversight.

The bill provides that the act shall take effect on the same date that SB 1540 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. SB 1540 has an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates public records exemptions and a public meeting exemption; therefore, it requires a two-thirds vote.

Public Necessity Statement

Article I, section 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records or open meetings requirements to state with specificity the public necessity justifying the exemption. Section 2 includes a public necessity statement for both exemptions.

Breadth of Exemption***Public Records Exemption***

Article I, section 24(c), of the State Constitution requires exemptions to both public records and open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect information that reveals the identity of elder or vulnerable adult abuse victims, information that reveals the identity of persons responsible for the welfare of such victims, and otherwise existing confidential and exempt information. This bill exempts only such information from the public records requirements. Therefore, the exemption does not appear to be broader than necessary to accomplish the purpose of the law.

Public Meetings Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. Like the public records exemption, the stated purpose of the law is to protect information that reveals the identity of elder or vulnerable adult abuse victims, information that reveals the identity of persons responsible for the welfare of such victims, and otherwise existing confidential and exempt information. The bill appears to only exempt the portions of the meetings during which such information is discussed. Therefore, the exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 415.1103 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on April 4, 2023:

The Committee Substitute:

- Links the effective date of SB 1542 to that of SB 1540, 2023 Regular Session (SB 1540 has an effective date of July 1, 2023).
- Clarifies that any information that is exempt or confidential and exempt retains its status as such when reviewed by an EV-FRT.
- Clarifies that portions of meetings during which exempt or confidential and exempt information is reviewed are exempt from disclosure requirements. The amendment also makes a similar change to the bill's public necessity statement as it related to the open meetings exemption.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and
Senator Garcia

586-03509-23

20231542c1

A bill to be entitled

An act relating to public records and public meetings;
amending s. 415.1103, F.S.; specifying that
information obtained by an elder abuse or vulnerable
adult abuse fatality review team which is exempt or
confidential and exempt from public records
requirements retains its protected status; providing
an exemption from public records requirements for
personal identifying information of an abuse victim
and other specified information contained in records
held by a review team; providing an exemption from
public meetings requirements for portions of review
team meetings during which certain exempt or
confidential and exempt information is discussed;
providing for future legislative review and repeal of
the exemption; providing statements of public
necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (9) is added to section 415.1103,
Florida Statutes, as amended by SB 1540 or similar legislation,
to read:

415.1103 Elder abuse and vulnerable adult abuse fatality
review teams.—

(11)(a)1. Any information that is exempt or confidential
and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
Constitution and is obtained by an elder abuse or vulnerable
adult abuse fatality review team while executing its duties

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

586-03509-23

20231542c1

under this section retains its exempt or confidential and exempt
status when held by the review team.

2. Any information contained in a record created by a
review team pursuant to this section which reveals the identity
of a victim of abuse, exploitation, or neglect or the identity
of persons responsible for the welfare of a victim is
confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
of the State Constitution.

3. Any information that is maintained as exempt or
confidential and exempt within this chapter retains its exempt
or confidential and exempt status when held by a review team.

(b) Portions of meetings of a review team relating to
abuse, exploitation, or neglect or abuse-related deaths of
elderly persons or otherwise vulnerable adults, and the
prevention of such abuse, exploitation, neglect, or deaths,
during which exempt or confidential and exempt information,
information protected within this chapter, the identity of the
victim, or the identity of persons responsible for the welfare
of the victim is discussed, are exempt from s. 286.011 and s.
24(b), Art. I of the State Constitution.

(c) This subsection is subject to the Open Government
Sunset Review Act in accordance with s. 119.15 and shall stand
repealed on October 2, 2028, unless reviewed and saved from
repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public
necessity that information that is exempt or confidential and
exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
Article I of the State Constitution remains exempt or
confidential and exempt when held by an elder abuse or

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

586-03509-23

20231542c1

59 vulnerable adult abuse fatality review team. Additionally, the
 60 Legislature finds that it is a public necessity that information
 61 that reveals the identity of a victim of abuse, exploitation, or
 62 neglect or the identity of persons responsible for the welfare
 63 of such victim be confidential and exempt from public records
 64 requirements because the disclosure of such sensitive personal
 65 identifying information could impede the open communication and
 66 coordination among the parties involved in the review team. The
 67 harm that would result from the release of such information
 68 substantially outweighs any public benefit that would be
 69 achieved by disclosure.

70 (2) The Legislature further finds that it is a public
 71 necessity that portions of meetings of a review team during
 72 which exempt or confidential and exempt information, information
 73 protected within this chapter, the identity of the victim, or
 74 the identity of persons responsible for the welfare of the
 75 victim is discussed, are exempt from s. 286.011, Florida
 76 Statutes, and s. 24(b), Article I of the State Constitution.
 77 Failure to close the portions of the meetings in which such
 78 sensitive personal identifying information is discussed would
 79 defeat the purpose of the public records exemption. Further, the
 80 Legislature finds that the exemption is narrowly tailored to
 81 apply only to those portions of the meetings in which such
 82 sensitive personal identifying information is discussed and that
 83 the remainder of such meetings remain open to allow for public
 84 oversight.

85 Section 3. This act shall take effect on the same date that
 86 SB 1540 or similar legislation takes effect if such legislation
 87 is adopted in the same legislative session or an extension

586-03509-23

20231542c1

88 thereof and becomes a law.



The Florida Senate

Committee Agenda Request

To: Senator Gayle Harrell, Chair
Appropriations Committee on Health and Human Services

Subject: Committee Agenda Request

Date: April 4, 2023

I respectfully request that **Senate Bill # 1542**, relating to Public Records and Public Meetings/Elder Abuse or Vulnerable Adult Abuse Fatality Review Team, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in blue ink, appearing to read "Ileana Garcia", is written over a horizontal line.

Senator Ileana Garcia
Florida Senate, District 36

The Florida Senate

APPEARANCE RECORD

Tab
9

4/18/23

Meeting Date

1542

Bill Number or Topic

Appropriations on Health

Deliver both copies of this form to
Senate professional staff conducting the meeting

Human Services

Committee

Amendment Barcode (if applicable)

Name **AARP-Karen Murillo**

Phone **850-567-0414**

Address **215 S. Monroe St.**

Email **Kmurillo@aarp.org**

Street

Tallahassee FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

AARP

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

BILL: CS/SB 1548

INTRODUCER: Health Policy Committee and Senator Bradley

SUBJECT: Children's Medical Services Program

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	Barr	Money	AHS	Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1548 clarifies responsibilities of the Department of Health (DOH) Children's Medical Services (CMS) Program, transfers the Children's Medical Services Managed Care Plan (CMS MCP) from the DOH to the Agency for Health Care Administration (AHCA), and updates the Newborn Screening (NBS) Program and the Newborn Hearing Screening (NBHS) Program to reflect current and best practices.

The bill transfers Medicaid and Children's Health Insurance Program (CHIP) provider and operational contracting duties and responsibilities from the Department of Health (DOH) to the Agency for Health Care Administration (AHCA), effective October 24, 2024.

The bill requires the AHCA to competitively procure one or more specialty plan contracts for services to children with special health care needs enrolled in Medicaid and CHIP beginning in the 2024-2025. The DOH will retain responsibility for clinical eligibility determinations and must provide ongoing consultation to the AHCA on services to children and youth with special health care needs.

The bill clarifies and codifies the programs under the Children's Medical Services Program within the DOH.

The bill makes the following changes to the NBS Program:

- Updates language to include testing blood samples for multiple conditions, not just phenylketonuria;
- Removes the requirement that the NBS Program consult with the Department of Education (DOE);
- Authorizes licensed genetic counselors to receive newborn screening results; and
- Requires all specimens collected be submitted directly to the State Public Health Laboratory in accordance with adopted rules.

The bill makes the following changes to the NBHS Program:

- Defines and incorporates the term “toddler” into the program language;
- Provides standard requirements for hearing screening at hospitals, licensed birth facilities, and birthing centers; and
- Requires hearing screening or diagnostic testing results be reported to the NBHS Program for infants and toddlers up to 36 months of age.

The bill provides an effective date of July 1, 2023, except as otherwise expressly provided.

II. Present Situation:

Agency for Health Care Administration

The Agency for Health Care Administration (AHCA) is the chief health policy and planning entity for the state and is primarily responsible for the state’s Medicaid program; the licensure and regulation of the state’s 48,500 health care facilities; and the sharing of health care data through the Florida Center for Health Information and Policy Analysis.¹

The Department of Health

The Department of Health (DOH) is tasked with protecting and promoting the health of residents and visitors in the state and has been responsible for the administration of the Children’s Medical Services (CMS) programs and the CMS Network since the program’s inception in 1978.

Florida Medicaid

Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. Medicaid also assists the elderly and people with disabilities with the costs of nursing facility care and other medical and long-term care expenses.² With federal approval, Florida has used a comprehensive managed care delivery program model for primary and acute care services since 2014, with the Statewide Medicaid Managed Care (SMMC), Managed Medical Assistance (MMA) program, and SMMC Long-Term Care (LTC) programs.³

¹ Agency for Health Care Administration, *About*, available at <https://ahca.myflorida.com/about> (last visited Mar. 29, 2023).

² Agency for Health Care Administration, *Medicaid*, available at <https://ahca.myflorida.com/medicaid> (last visited Mar. 29, 2023).

³ Agency for Health Care Administration, *Statewide Medicaid Managed Care*, available at <https://ahca.myflorida.com/medicaid/statewide-medicaid-managed-care> (last visited Apr. 12, 2023).

The Florida Medicaid program covers over 5.5 million low-income individuals, including approximately 2.5 million children, or 54 percent, of the children in Florida.⁴

Florida KidCare

The Florida KidCare Program provides low-cost health insurance for children in Florida. The program was created through Title XXI of the Social Security Act to provide a defined set of health benefits to uninsured, low-income children through the establishment of a variety of affordable health benefits coverage options from which families may select coverage and through which families may contribute financially to the health care of their children.⁵

Currently, more than 2.4 million Florida children are enrolled in Florida KidCare.⁶

Children's Medical Services

Children's Medical Services (CMS) is a compilation of programs that serve children and youth with special health care needs (CYSHCN). Administered by the CMS Program within the DOH, each program is responsible to either provide a managed system of care; preventive, evaluative, or early intervention services; or statewide children's services.⁷

The following programs are currently named in statute as part of the CMS programs:

- Children's Medical Services Managed Care Plan;
- Early Steps;
- Newborn Screening;
- Regional Perinatal Intensive Care Centers;

Additional functions and programs of the DOH CMS Program that are not currently named or outlined in statute include:

- Child Abuse Death Review;
- Child Protection Team and Special Technologies;
- Children's Multidisciplinary Assessment Team;
- Medical Foster Care;
- Newborn and Infant Hearing Screening Program;
- Poison Information Center Network;
- Safety Net;
- Sexual Abuse Treatment Program;
- Specialty Contracts, including Statewide and Regional Networks for Access and Quality;
- State Systems Development Initiative;

⁴ House of Representatives Staff Analysis, *House Bill 1503, 2023 Legislative Session* (Mar. 28, 2023) referencing Agency for Health Care Administration, Presentation to the House Healthcare Regulation Subcommittee, Jan. 18, 2023, (on file in the Senate Committee on Health Policy).

⁵ Section 409.9812, F.S.

⁶ House of Representatives Staff Analysis, *House Bill 1503, 2023 Legislative Session* (Mar. 28, 2023) referencing Agency for Health Care Administration, Presentation to the House Healthcare Regulation Subcommittee, Jan. 18, 2023, (on file in the Senate Committee on Health Policy).

⁷ Department of Health, 2023 Agency Legislative Bill Analysis, *House Bill 1503* (Feb. 24, 2023) (on file with the Senate Committee on Health Policy).

- Title V for CYSHCN;
- Research and evaluation projects to improve the delivery of services to CYSHCN; and
- Conducting clinical screening to determine the medical eligibility of CYSHCN for programs such as Medicaid, CHIP, and Safety Net.⁸

Children's Medical Services Network

The Children's Medical Services (CMS) Network provides children with special health care needs a family-centered, comprehensive, and coordinated statewide managed system of care and provides essential preventative, evaluative, and early intervention services for children at risk for or having special health care needs. Originally, the CMS Network was a fee-for-service program serving children with special health care needs who were enrolled in either Medicaid or the Children's Health Insurance Program (CHIP). In August 2014, the CMS Network was transitioned to a managed care model under the purview of the AHCA and became known as the Children's Medical Services Managed Care Plan (CMS MCP). Current law has not been updated to reflect the name change.⁹

The AHCA contracts with the DOH, who remains responsible for administering the CMS MCP. The DOH conducts the clinical eligibility determination for CMS clients, subcontracts with private vendors for the plan's operation including case management, and provides vendor oversight in the areas of clinical operations, compliance, performance management, family level grievance remedies, and provider technical assistance. The DOH sends all contractors' and vendors' invoices to the AHCA for payment, often causing delays.¹⁰

The CMS MCP must meet requirements of health plans for participation in the managed medical assistance program established in s. 409.974, F.S., except for the requirement to be competitively procured by the AHCA.

In December 2022, the CMS MCP provided services to 96,937 Medicaid enrollees and 7,167 members enrolled in CHIP.¹¹

CMS Network Advisory Council and Technical Panels

Sections 391.221 and 391.223, F.S., establish the Statewide CMS Network Advisory Council and technical advisory panels, respectively. These bodies serve to advise the State Surgeon General on the operations of the CMS Network as a fee-for-service program. The CMS Managed Care Plan conformity with the requirements in ch. 409, F.S., renders the role and responsibilities of these councils and panels obsolete. In accordance with s. 20.43(6), F.S., the State Surgeon General retains the authority to implement ad hoc advisory committees, as needed, without the need for this provision specifically for the CMS MCP.

⁸ Department of Health, 2023 Agency Legislative Bill Analysis, *House Bill 1503* (Feb. 24, 2023) (on file with the Senate Committee on Health Policy).

⁹ Id.

¹⁰ Id.

¹¹ Id.

Newborn Screening Program

Florida's Newborn Screening (NBS) Program within the DOH promotes the screening of all newborns for metabolic, hereditary, and congenital disorders known to result in significant impairment of health or intellect.¹² The NBS Program also promotes the screening of all newborns and their families for environmental risk factors such as low income, poor education, maternal and family stress, emotional instability, substance abuse, and other high-risk conditions associated with increased risk of infant mortality and morbidity to provide early intervention, remediation, and prevention services.¹³ The NBS processes are governed by ss. 383.14 and 383.145, F.S.

The Florida Genetics and Newborn Screening Advisory Council (GNSAC) advises the DOH about which disorders to include in the NBS panel of screened disorders and the procedures for collecting and transmitting specimens.¹⁴ Newborn Screening began with screening for phenylketonuria (PKU)¹⁵ and now screens for 58 conditions prior to discharge. Fifty-five of these conditions are screened through the collection of blood spots. Screening of the three remaining conditions – hearing deficiencies, critical congenital heart defect (CCHD), and congenital cytomegalovirus (cCMV) targeted screening – are completed at a birthing facility through point-of-care testing.¹⁶

The GNSAC coordinates with the DOH Bureau of Public Health Laboratories (BPHL) and the DOH CMS Program as provided in s. 383.14(5), F.S. Historically, the NBS Program has not collaborated with the Department of Education (DOE); however, other programs in this statute, such as Healthy Start, have a longstanding relationship with DOE.¹⁷

Florida law specifies to whom the NBS Program may release NBS screening results. In 2021, the Florida Legislature passed a measure creating initial licensure and renewal for genetic counselors. Currently, the NBS Program is not permitted to release specimen results to genetic counselors, a situation that can prolong the time before an infant receives treatment.¹⁸

The NBS Program has set quality benchmarks for collecting specimens and shipping NBS specimens to the state laboratory. These benchmarks were created using national standards and guidelines established by the Advisory Committee on Heritable Disorders in Newborns and Children, the US Department of Health and Human Services, and the Joint Committee on Infant Hearing (JCIH).¹⁹

¹² S. 383.14(1), F.S.

¹³ Id.

¹⁴ Section 383.14(5), F.S.

¹⁵ See Mayo Clinic, Patient Care & Health Information Diseases & Conditions, *Phenylketonuria (PKU)*, available at [https://www.mayoclinic.org/diseases-conditions/phenylketonuria/symptoms-causes/syc-20376302#:~:text=Phenylketonuria%20\(fen%2Dul%2Dkey,needed%20to%20break%20down%20phenylalanine](https://www.mayoclinic.org/diseases-conditions/phenylketonuria/symptoms-causes/syc-20376302#:~:text=Phenylketonuria%20(fen%2Dul%2Dkey,needed%20to%20break%20down%20phenylalanine). (last visited Mar. 29, 2023) Phenylketonuria, also called PKU, is a rare inherited disorder that causes an amino acid called phenylalanine to build up in the body. Without treatment this can lead to severe brain damage.

¹⁶ Department of Health, 2023 Agency Legislative Bill Analysis, *House Bill 1503* (Feb. 24, 2023) (on file with the Senate Committee on Health Policy).

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

Quality benchmarks for blood spot collection require:

- Less than 1 percent of specimens received by the state laboratory are unsatisfactory for testing; and
- At least 80 percent of specimens should be received at BPHL-Jacksonville no later than three days after collection. To achieve this, specimens should be shipped within 24 hours of collection to the state laboratory via overnight delivery.

Quality benchmarks for CCHD screening require at least 90 percent of specimens submitted must have appropriate CCHD screening data included on the specimen card.

Quality benchmarks for hearing screening require:

- A hearing screening no later than one month of age;
- A diagnosis no later than three months of age; and
- Entry into early intervention services no later than six months of age.

State statutes currently gives the NBS Program authority to create rules.²⁰

Florida Administrative Code Rule 64C-7(2022), requires the submitting entity to ensure that a satisfactory newborn screening has been collected. A review of data between 2018-2020 identified 5.5 percent (14,981) of specimens submitted to the state laboratory were unsatisfactory, which means the specimen cannot be tested and the family must return to the hospital, midwife, or pediatrician for another screening. Reviewing the same three years, 21 percent (56,664) of the specimens were received at the state laboratory after three days of collection. Both concerns resulted in a delay in receiving potentially lifesaving treatment.²¹

Section 383.14(2) and (3), F.S., require the DOH office of the inspector general to certify the annual costs of the newborn screening program.

Newborn and Infant Hearing Screening (NBHS)

The DOH Newborn and Infant Hearing and Screening (NBHS) Program supports a comprehensive statewide hearing screening and follow-up referral system. The NBHS Program is funded through donations, trust funds, and federal grants from the Centers for Disease Control and Prevention (CDC) and the Health Resources and Services Administration (HRSA).

In 2022, the Florida Legislature mandated that a hospital or other state-licensed birthing facility test newborns for cCMV if the newborn fails his or her screening for hearing loss, before the newborn is 21 days old or before discharge, whichever is earlier. Statewide targeted cCMV screening began on January 1, 2023. Screening must be completed prior to 21 days of age to differentiate between congenital and acquired CMV. Newborns with congenital CMV may have birth defects and developmental disabilities. Individuals with acquired CMV typically have mild or no symptoms.²²

²⁰ Id.

²¹ Id.

²² Id.

Section 383.145, F.S., requires a newborn hearing screening for all newborns in hospitals before the newborn is discharged from the hospital or other state-licensed birthing facility, unless objected to by the parent or legal guardian. However, if the screening is not completed before discharge due to scheduling or temporary staffing limitations, the screening must be completed within 21 days after the birth.

Before a newborn is discharged from a licensed birth center, such facility must refer the newborn to a licensed audiologist, physician, or hospital for screening for detection of hearing loss and referral for appointment must be made within 30 days after discharge.

If the birth is a home birth, the health care provider in attendance must provide a referral to a licensed audiologist, hospital, or other newborn hearing screening provider and the referral for appointment must be made within seven days after the birth.²³

All screenings must be conducted by a licensed audiologist, a licensed physician, or appropriately supervised individual who has completed documented training specifically for newborn hearing screening. When ordered by the treating physician, screening of a newborn's hearing must include auditory brainstem responses, evoked otoacoustic emissions, or appropriate technology as approved by the federal Food and Drug Administration (FDA). Any person who is not covered through health insurance and cannot afford the costs for testing, must be given a list of newborn hearing screening providers who provide the necessary testing free-of-charge.²⁴

A child who is diagnosed with a permanent hearing impairment must be referred to the primary care physician for medical management, treatment, and follow-up services. Any child, from birth to 36 months of age who is diagnosed with a hearing impairment that requires ongoing special hearing services must be referred to the DOH CMS Early Intervention Program.²⁵

Section 391.055(4), F.S., requires newborns with abnormal screenings be referred to the CMS local programs for additional testing and services. With the transition of the CMS Network to the CMS Managed Care Plan, newborns with abnormal screenings are served by the NBS Program.

III. Effect of Proposed Changes:

Section 1 amends s. 383.14, F.S., to remove obsolete language and to update the statutes to reflect current practices in the Newborn Screening (NBS) Program:

- Remove the Department of Education (DOE) from parties with whom the Department of Health (DOH) must consult regarding screening and tests to be performed;
- Authorize the taking of a blood sample before one week of age for “screening,” rather than for testing for phenylketonuria only;
- Add genetic counselors to practitioners who can receive newborn screening test results;
- Change assessment billing language to allow for more efficient processing of fees;
- Delete the requirement that the DOH include an audited report of the costs of the NBS Program in its annual legislative budget request; and

²³ Id.

²⁴ Id.

²⁵ Id.

- Require all NBS Program specimen cards to be sent directly to the state laboratory.

Section 2 amends s. 383.145, F.S., which authorizes the Newborn and Infant Hearing Screening (NBHS) Program, to remove obsolete practices, update for legislative changes, and update to current practice standards:

- Define the term “toddler” as child from 12 months to 36 months of age, and integrate the term into program requirements to comply with federal grant requirements for the collection of hearing screening data;
- Require licensed birth centers providing maternity and newborn care services to ensure that all newborns are screened for the detection of hearing loss before discharge;
- Require birth centers to ensure that all newborns who do not pass the hearing screening are referred for a test to screen for congenital cytomegalovirus before the newborn becomes 21 days of age;
- Delete the requirement for providers to refer patients to audiologist or hospital for hearing screening; and
- Require early childhood programs to report screening results to the DOH CMS Program within seven days.

Section 3 amends s. 391.016, F.S., to update DOH CMS programs terminology to include “children and youth” and to delete the obsolete requirement that the DOH CMS Program coordinate and maintain a consistent medical home for participating children.

Section 4 amends s. 391.021, F.S., to rename “Children’s Medical Services Network,” to “Children’s Medical Services Managed Care Plan (CMS MCP)” and to update terminology to include “children and youth” in place of “children.”

Section 5 amends s. 391.025, F.S., to clarify the scope of the DOH CMS Program to include the following:

- The Newborn and Infant Hearing Screening Program;
- The Children’s Medical Services Managed Care Plan;
- The Children’s Multidisciplinary Assessment Team;
- The Medical Foster Care Program;
- The Title V program for children and youth with special health care needs;
- The Safety Net Program;
- The Networks for Access and Quality;
- Child Protection Teams and sexual abuse treatment programs established under s. 39.303, F.S.; and
- The State Child Abuse Death Review Committee and local child abuse death review committees established in s. 383.402, F.S.

Section 6 amends s. 391.026, F.S., relating to powers and duties of the DOH, to:

- Remove obsolete language granting the DOH authority and responsibility to serve as a provider and principal case manager for children with special health care needs under Titles XIX and XXI of the Social Security Act;
- Reflect the name change from CMS Network to CMS MCP; and
- Authorize the DOH to administer the Medical Foster Care program, including:

- Recruitment, training, assessment, and monitoring for the program;
- Monitoring access and facilitating admissions of eligible children and youth to the program and designated Medical Foster Care homes; and
- Coordination with the Department of Children and Families and the Agency for Health Care Administration, or their designees.

Section 7 amends s. 391.028, F.S., to modify the following CMS Program activities:

- Remove responsibility for case management services for network participants;
- Change local program activities to statewide program activities;
- Remove responsibility to develop treatment plans; and
- Remove requirements for CMS area office management.

Section 8 amends 391.029, F.S., outlining individuals who are eligible to receive CMS program services, to:

- Clarify a high-risk pregnant female enrolled in Medicaid is eligible when receiving services through a Regional Perinatal Intensive Care Centers (RIPCC); and
- Update terminology to include “children and youth” in place of “children”.

Section 9 amends s. 391.0315, F.S., to specify that benefits provided under the CMS MCP are required to be equivalent to mandatory Medicaid benefits required under s. 409.905, F.S., and optional Medicaid benefits under s. 409.906, F.S.

Sections 10 repeals s. 391.035, F.S., removing the obsolete requirement for the DOH CMS Program to establish provider qualifications.

Section 11 amends s. 391.045, F.S., to reflect the name change from CMS Network to CMS MCP and to update terminology to include “children and youth” in place of “children.”

Section 12 amends s. 391.055, F.S., to:

- Reflect name change from CMS Network to CMS MCP
- Delete language specifying components of the CMS network;
- Authorize CMS MCPs to contract with school districts; and
- Delete the requirement that newborns with abnormal screening results for metabolic or other hereditary and congenital disorders must be referred to the DOH CMS program for additional services.

Section 13 amends s. 391.097, F.S., which authorizes the DOH to initiate, fund, and conduct research to improve delivery of CMS, to reflect the name change from CMS Network to CMS MCP.

Section 14 repeals ss. 391.221 and 391.223, F.S., eliminating the CMS Statewide Network Advisory Council and Technical advisory panels.

Section 15 provides legislative intent that the operations of the CMS MCP be transitioned from the DOH to the AHCA and that the AHCA competitively procure and operate one or more specialty plan contracts starting the 2024-2025 plan year.

Section 16 requires the transfer of all duties, authority, functions, obligations, and resources for operations of the CMS MCP be transferred from the DOH to the AHCA, effective October 1, 2024. The DOH will retain responsibility for conducting clinical eligibility screening for children with special health care needs. The bill also directs the DOH CMS Program to assist the AHCA in developing requirements for the new specialty plan procurement and contracts.

Section 17 requires that by November 1, 2023, the AHCA and the DOH must submit to the Legislature a report specifying any legislative or administrative changes needed to effectively transfer operations of the CMS MCP from the DOH to the AHCA.

Section 18 amends s. 409.974, F.S., relating to eligible Medicaid plans, to reflect the transition from the CMS Network at the DOH to the CMS MCP at the AHCA. The AHCA must competitively procure one or more vendors to provide services for children with special health care needs who are enrolled in Medicaid and for children with special health care needs who are enrolled in CHIP for the 2024-2025 plan year. The DOH CMS Program must:

- Assist the AHCA in developing specifications for the procurement contract;
- Conduct clinical eligibility screening for children with special health care needs who are eligible for or are enrolled in Medicaid or CHIP; and
- Collaborate with the AHCA in the care of children with special health care needs.

Section 19 amends s. 409.166, F.S., effective October 1, 2024, to allow the adoptive parents of a child covered under CMS programs to also receive adoption assistance. The bill also amends s. 409.166, F.S., to replace the specific reference to CMS Network services with a broader reference to a specialty plan under contract with the AHCA to serve children with special health care needs.

Sections 20 through 27 effective October 1, 2024, amend ss. 409.811, 409.813, 409.8134, 409.814, 409.815, 409.8177, 409.818, 409.912, 409.9126, F.S., respectively, to make technical changes to update obsolete references to CMS Network and to reflect the transfer of the CMS MCP from the DOH to the AHCA, which is effective October 1, 2024.

Section 28 amends s. 409.9126, F.S., effective October 1, 2024, deleting to the requirement that Medicaid-eligible children diagnosed with HIV/AIDS must be served through the CMS Network.

Sections 29 through 31 effective October 1, 2024, amend ss. 409.9131, 409.920, and 409.962, F.S., respectively, relating to Medicaid overpayments, Medicaid fraud and Medicaid eligible plans, and deletes references to Children's Medical Services Network.

Section 31 provides an effective date of July 1, 2023, except as otherwise expressly provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill is designed to streamline the payment and reimbursement process for venders, providers, and the Agency for Health Care Administration.

C. Government Sector Impact:

The Department of Health (DOH) reports no fiscal impact to the state expenditures or revenue. The October 1, 2024 transfer of responsibility for the Children's Medical Services Managed Care Plan from DOH to Agency for Health Care Administration will be accompanied by the transfer of existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 383.14, 383.145, 391.016, 391.021, 391.025, 391.026, 391.028, 391.029, 391.0315, 391.045, 391.055, 391.097, 409.974, 409.166, 409.811, 409.813, 409.8134, 409.814, 409.815, 409.8177, 409.818, 409.912, 409.9126, 409.9131, 409.920, and 409.962.

This bill repeals the following sections of the Florida Statutes: 391.035, 391.221, and 391.223.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy April 4, 2023:

The CS revises the bill's placement of children who meet clinical CMS eligibility within the KidCare program by providing that such children will be assigned to and may opt-out of a specialty plan under contract with the AHCA to serve children with special health care needs, instead of being assigned to the CMS Managed Care Plan or the CMS Network as provided under the bill and current law, respectively. The CS makes a similar revision to a separate statutory provision relating to a requirement to complete an application and a clinical screening.

- B. **Amendments:**

None.

By the Committee on Health Policy; and Senator Bradley

588-03492-23

20231548c1

1 A bill to be entitled
 2 An act relating to the Children's Medical Services
 3 program; amending s. 383.14, F.S.; deleting a
 4 requirement that the Department of Health consult with
 5 the Department of Education before prescribing certain
 6 newborn testing and screening requirements;
 7 authorizing the release of certain newborn screening
 8 results to licensed genetic counselors; requiring that
 9 newborns have a blood specimen collected for newborn
 10 screenings before they reach a specified age; deleting
 11 a requirement that newborns be subjected to a certain
 12 test; conforming provisions to changes made by the
 13 act; revising requirements related to a certain
 14 assessment for hospitals and birth centers; deleting a
 15 requirement that the department submit a certain
 16 annual cost certification as part of its annual
 17 legislative budget request; requiring certain health
 18 care practitioners and health care providers to
 19 prepare and send all newborn screening specimen cards
 20 to the State Public Health Laboratory; amending s.
 21 383.145, F.S.; defining the term "toddler"; revising
 22 newborn screening requirements for licensed birth
 23 centers; requiring that a certain referral for newborn
 24 screening be made before the newborn reaches a
 25 specified age; requiring early childhood programs and
 26 entities that screen for hearing loss to report the
 27 screening results to the department within a specified
 28 timeframe; amending s. 391.016, F.S.; revising the
 29 purposes and functions of the Children's Medical

Page 1 of 40

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03492-23

20231548c1

30 Services program; amending s. 391.021, F.S.; revising
 31 definitions; amending s. 391.025, F.S.; revising the
 32 scope of the program; amending s. 391.026, F.S.;
 33 revising the powers and duties of the Department of
 34 Health to conform to changes made by the act; amending
 35 s. 391.028, F.S.; revising activities within the
 36 purview of the program; deleting a requirement that
 37 every office of the program be under the direction of
 38 a licensed physician; amending s. 391.029, F.S.;
 39 revising program eligibility requirements; amending s.
 40 391.0315, F.S.; conforming provisions to changes made
 41 by the act; repealing s. 391.035, F.S., relating to
 42 provider qualifications; amending s. 391.045, F.S.;
 43 conforming provisions to changes made by the act;
 44 amending s. 391.055, F.S.; conforming provisions to
 45 changes made by the act; deleting specifications for
 46 the components of the program; deleting certain
 47 requirements for newborns referred to the program
 48 through the newborn screening program; amending s.
 49 391.097, F.S.; conforming a provision to changes made
 50 by the act; repealing part II of chapter 391, F.S.,
 51 relating to Children's Medical Services councils and
 52 panels; providing legislative findings and intent;
 53 transferring operation of the Children's Medical
 54 Services Managed Care Plan from the department to the
 55 Agency for Health Care Administration, effective on a
 56 specified date; providing construction as to judicial
 57 and administrative actions pending as of a specified
 58 date and time; requiring the department's Children's

Page 2 of 40

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03492-23

20231548c1

Medical Services program to collaborate with and assist the agency in specified activities; requiring the department to conduct certain clinical eligibility screenings; requiring the agency and the department to submit a report to the Legislature by a specified date; providing requirements for the report; amending s. 409.974, F.S.; requiring the agency to competitively procure one or more vendors to provide services for certain children with special health care needs; requiring the department's Children's Medical Services program to assist the agency in developing certain specifications for the vendor contract; requiring the department to conduct clinical eligibility screenings for services for such children and collaborate with the agency in the care of such children; conforming a provision to changes made by the act; amending ss. 409.166, 409.811, 409.813, 409.8134, 409.814, 409.815, 409.8177, 409.818, 409.912, 409.9126, 409.9131, 409.920, and 409.962, F.S.; conforming provisions to changes made by the act; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 383.14, Florida Statutes, is amended to read:

383.14 Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.—

(1) SCREENING REQUIREMENTS.—To help ensure access to the

588-03492-23

20231548c1

maternal and child health care system, the Department of Health shall promote the screening of all newborns born in Florida for metabolic, hereditary, and congenital disorders known to result in significant impairment of health or intellect, as screening programs accepted by current medical practice become available and practical in the judgment of the department. The department shall also promote the identification and screening of all newborns in this state and their families for environmental risk factors such as low income, poor education, maternal and family stress, emotional instability, substance abuse, and other high-risk conditions associated with increased risk of infant mortality and morbidity to provide early intervention, remediation, and prevention services, including, but not limited to, parent support and training programs, home visitation, and case management. Identification, perinatal screening, and intervention efforts shall begin prior to and immediately following the birth of the child by the attending health care provider. Such efforts shall be conducted in hospitals, perinatal centers, county health departments, school health programs that provide prenatal care, and birthing centers, and reported to the Office of Vital Statistics.

(a) *Prenatal screening*.—The department shall develop a multilevel screening process that includes a risk assessment instrument to identify women at risk for a preterm birth or other high-risk condition. The primary health care provider shall complete the risk assessment instrument and report the results to the Office of Vital Statistics so that the woman may immediately be notified and referred to appropriate health, education, and social services.

588-03492-23

20231548c1

117 (b) *Postnatal screening*.—A risk factor analysis using the
 118 department's designated risk assessment instrument shall also be
 119 conducted as part of the medical screening process upon the
 120 birth of a child and submitted to the department's Office of
 121 Vital Statistics for recording and other purposes provided for
 122 in this chapter. The department's screening process for risk
 123 assessment shall include a scoring mechanism and procedures that
 124 establish thresholds for notification, further assessment,
 125 referral, and eligibility for services by professionals or
 126 paraprofessionals consistent with the level of risk. Procedures
 127 for developing and using the screening instrument, notification,
 128 referral, and care coordination services, reporting
 129 requirements, management information, and maintenance of a
 130 computer-driven registry in the Office of Vital Statistics which
 131 ensures privacy safeguards must be consistent with the
 132 provisions and plans established under chapter 411, Pub. L. No.
 133 99-457, and this chapter. Procedures established for reporting
 134 information and maintaining a confidential registry must include
 135 a mechanism for a centralized information depository at the
 136 state and county levels. The department shall coordinate with
 137 existing risk assessment systems and information registries. The
 138 department must ensure, to the maximum extent possible, that the
 139 screening information registry is integrated with the
 140 department's automated data systems, including the Florida On-
 141 line Recipient Integrated Data Access (FLORIDA) system. Tests
 142 and screenings must be performed by the State Public Health
 143 Laboratory, in coordination with Children's Medical Services, at
 144 such times and in such manner as is prescribed by the department
 145 after consultation with the Genetics and Newborn Screening

Page 5 of 40

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03492-23

20231548c1

146 Advisory Council ~~and the Department of Education~~.

147 (c) *Release of screening results*.—Notwithstanding any law
 148 to the contrary, the State Public Health Laboratory may release,
 149 directly or through the Children's Medical Services program, the
 150 results of a newborn's ~~hearing and metabolic tests or~~ screenings
 151 to the newborn's health care practitioner, the newborn's parent
 152 or legal guardian, the newborn's personal representative, or a
 153 person designated by the newborn's parent or legal guardian. As
 154 used in this paragraph, the term "health care practitioner"
 155 means a physician or physician assistant licensed under chapter
 156 458; an osteopathic physician or physician assistant licensed
 157 under chapter 459; an advanced practice registered nurse,
 158 registered nurse, or licensed practical nurse licensed under
 159 part I of chapter 464; a midwife licensed under chapter 467; a
 160 speech-language pathologist or audiologist licensed under part I
 161 of chapter 468; ~~or~~ a dietician or nutritionist licensed under
 162 part X of chapter 468; or a genetic counselor licensed under
 163 part III of chapter 483.

164 (2) RULES.—

165 (a) After consultation with the Genetics and Newborn
 166 Screening Advisory Council, the department shall adopt and
 167 enforce rules requiring that every newborn in this state must
 168 ~~shall~~:

169 1. Before becoming 1 week of age, have a blood specimen
 170 collected for newborn screenings ~~be subjected to a test for~~
 171 ~~phenylketonuria~~;

172 2. Be tested for any condition included on the federal
 173 Recommended Uniform Screening Panel which the council advises
 174 the department should be included under the state's screening

Page 6 of 40

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03492-23

20231548c1

175 program. After the council recommends that a condition be
 176 included, the department shall submit a legislative budget
 177 request to seek an appropriation to add testing of the condition
 178 to the newborn screening program. The department shall expand
 179 statewide screening of newborns to include screening for such
 180 conditions within 18 months after the council renders such
 181 advice, if a test approved by the United States Food and Drug
 182 Administration or a test offered by an alternative vendor is
 183 available. If such a test is not available within 18 months
 184 after the council makes its recommendation, the department shall
 185 implement such screening as soon as a test offered by the United
 186 States Food and Drug Administration or by an alternative vendor
 187 is available; and

188 3. At the appropriate age, be tested for such other
 189 metabolic diseases and hereditary or congenital disorders as the
 190 department may deem necessary from time to time.

191 (b) After consultation with the Department of Education,
 192 the department shall adopt and enforce rules requiring every
 193 newborn in this state to be screened for environmental risk
 194 factors that place children and their families at risk for
 195 increased morbidity, mortality, and other negative outcomes.

196 (c) The department shall adopt such additional rules as are
 197 found necessary for the administration of this section and s.
 198 383.145, including rules providing definitions of terms, rules
 199 relating to the methods used and time or times for testing as
 200 accepted medical practice indicates, rules relating to charging
 201 and collecting fees for the administration of the newborn
 202 screening program authorized by this section, rules for
 203 processing requests and releasing test and screening results,

588-03492-23

20231548c1

204 and rules requiring mandatory reporting of the results of tests
 205 and screenings for these conditions to the department.

206 (3) DEPARTMENT OF HEALTH; POWERS AND DUTIES.—The department
 207 shall administer and provide certain services to implement the
 208 provisions of this section and shall:

209 (a) Assure the availability and quality of the necessary
 210 laboratory tests and materials.

211 (b) Furnish all physicians, county health departments,
 212 perinatal centers, birthing centers, and hospitals forms on
 213 which environmental screening and the results of tests for
 214 ~~phenylketonuria and such other~~ disorders for which testing may
 215 be required from time to time shall be reported to the
 216 department.

217 (c) Promote education of the public about the prevention
 218 and management of metabolic, hereditary, and congenital
 219 disorders and dangers associated with environmental risk
 220 factors.

221 (d) Maintain a confidential registry of cases, including
 222 information of importance for the purpose of follow-up ~~followup~~
 223 services to prevent intellectual disabilities, to correct or
 224 ameliorate physical disabilities, and for epidemiologic studies,
 225 if indicated. Such registry shall be exempt from the provisions
 226 of s. 119.07(1).

227 (e) Supply the necessary dietary treatment products where
 228 practicable for diagnosed cases of ~~phenylketonuria and other~~
 229 metabolic diseases for as long as medically indicated when the
 230 products are not otherwise available. Provide nutrition
 231 education and supplemental foods to those families eligible for
 232 the Special Supplemental Nutrition Program for Women, Infants,

588-03492-23

20231548c1

and Children as provided in s. 383.011.

(f) Promote the availability of genetic studies, services, and counseling in order that the parents, siblings, and affected newborns may benefit from detection and available knowledge of the condition.

(g) Have the authority to charge and collect fees for the administration of the newborn screening program. ~~authorized in this section, as follows:~~

~~1. A fee not to exceed \$15 will be charged for each live birth, as recorded by the Office of Vital Statistics, occurring in a hospital licensed under part I of chapter 395 or a birth center licensed under s. 383.305 per year. The department shall calculate the annual assessment for each hospital and birth center, and this assessment must be paid in equal amounts quarterly. Quarterly, The department shall generate and send mail to each hospital and birth center a statement of the amount due.~~

~~2. As part of the department's legislative budget request prepared pursuant to chapter 216, the department shall submit a certification by the department's inspector general, or the director of auditing within the inspector general's office, of the annual costs of the uniform testing and reporting procedures of the newborn screening program. In certifying the annual costs, the department's inspector general or the director of auditing within the inspector general's office shall calculate the direct costs of the uniform testing and reporting procedures, including applicable administrative costs. Administrative costs shall be limited to those department costs which are reasonably and directly associated with the~~

588-03492-23

20231548c1

~~administration of the uniform testing and reporting procedures of the newborn screening program.~~

(h) Have the authority to bill third-party payors for newborn screening tests.

(i) Create and make available electronically a pamphlet with information on screening for, and the treatment of, preventable infant and childhood eye and vision disorders, including, but not limited to, retinoblastoma and amblyopia.

All provisions of this subsection must be coordinated with the provisions and plans established under this chapter, chapter 411, and Pub. L. No. 99-457.

(4) OBJECTIONS OF PARENT OR GUARDIAN.—The provisions of this section shall not apply when the parent or guardian of the child objects thereto. A written statement of such objection shall be presented to the physician or other person whose duty it is to administer and report tests and screenings under this section.

(5) SUBMISSION OF NEWBORN SCREENING SPECIMEN CARDS.—Any physician, advanced practice registered nurse, licensed midwife, or other licensed health care practitioner or other health care provider whose duty it is to administer screenings under this section shall prepare and send all newborn screening specimen cards to the State Public Health Laboratory in accordance with rules adopted under this section.

(6) ADVISORY COUNCIL.—There is established a Genetics and Newborn Screening Advisory Council made up of 15 members appointed by the State Surgeon General. The council shall be composed of two consumer members, three practicing

588-03492-23

20231548c1

pediatricians, at least one of whom must be a pediatric hematologist, a representative from each of four medical schools in this state, the State Surgeon General or his or her designee, one representative from the Department of Health representing Children's Medical Services, one representative from the Florida Hospital Association, one individual with experience in newborn screening programs, one individual representing audiologists, and one representative from the Agency for Persons with Disabilities. All appointments shall be for a term of 4 years. The chairperson of the council shall be elected from the membership of the council and shall serve for a period of 2 years. The council shall meet at least semiannually or upon the call of the chairperson. The council may establish ad hoc or temporary technical advisory groups to assist the council with specific topics which come before the council. Council members shall serve without pay. Pursuant to the provisions of s. 112.061, the council members are entitled to be reimbursed for per diem and travel expenses. It is the purpose of the council to advise the department about:

(a) Conditions for which testing should be included under the screening program and the genetics program. Within 1 year after a condition is added to the federal Recommended Uniform Screening Panel, the council shall consider whether the condition should be included under the state's screening program.

(b) Procedures for collection and transmission of specimens and recording of results.

(c) Methods whereby screening programs and genetics services for children now provided or proposed to be offered in

588-03492-23

20231548c1

the state may be more effectively evaluated, coordinated, and consolidated.

Section 2. Section 383.145, Florida Statutes, is amended to read:

383.145 Newborn, ~~and~~ infant, and toddler hearing screening.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to provide a statewide comprehensive and coordinated interdisciplinary program of early hearing loss screening, identification, and follow-up care for newborns. The goal is to screen all newborns for hearing loss in order to alleviate the adverse effects of hearing loss on speech and language development, academic performance, and cognitive development. It is further the intent of the Legislature that this section only be implemented to the extent that funds are specifically included in the General Appropriations Act for carrying out the purposes of this section.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Audiologist" means a person licensed under part I of chapter 468 to practice audiology.

(b) "Department" means the Department of Health.

(c) "Hearing loss" means a hearing loss of 30 dB HL or greater in the frequency region important for speech recognition and comprehension in one or both ears, approximately 500 through 4,000 hertz.

(d) "Hospital" means a facility as defined in s. 395.002(13) and licensed under chapter 395 and part II of chapter 408.

(e) "Infant" means an age range from 30 days through 12

588-03492-23

20231548c1

349 months.

350 (f) "Licensed health care provider" means a physician or
 351 physician assistant licensed under chapter 458; an osteopathic
 352 physician or physician assistant licensed under chapter 459; an
 353 advanced practice registered nurse, a registered nurse, or a
 354 licensed practical nurse licensed under part I of chapter 464; a
 355 midwife licensed under chapter 467; or a speech-language
 356 pathologist or an audiologist licensed under part I of chapter
 357 468.

358 (g) "Management" means the habilitation of the child with
 359 hearing loss.

360 (h) "Newborn" means an age range from birth through 29
 361 days.

362 (i) "Physician" means a person licensed under chapter 458
 363 to practice medicine or chapter 459 to practice osteopathic
 364 medicine.

365 (j) "Screening" means a test or battery of tests
 366 administered to determine the need for an in-depth hearing
 367 diagnostic evaluation.

368 (k) "Toddler" means a child from 12 months to 36 months of
 369 age.

370 (3) REQUIREMENTS FOR SCREENING OF NEWBORNS, INFANTS, AND
 371 TODDLERS; INSURANCE COVERAGE; REFERRAL FOR ONGOING SERVICES.—

372 (a) Each hospital or other state-licensed birthing facility
 373 that provides maternity and newborn care services shall ensure
 374 that all newborns are, before discharge, screened for the
 375 detection of hearing loss to prevent the consequences of
 376 unidentified disorders. If a newborn fails the screening for the
 377 detection of hearing loss, the hospital or other state-licensed

588-03492-23

20231548c1

378 birthing facility must administer a test approved by the United
 379 States Food and Drug Administration or another diagnostically
 380 equivalent test on the newborn to screen for congenital
 381 cytomegalovirus before the newborn becomes 21 days of age or
 382 before discharge, whichever occurs earlier.

383 (b) Each licensed birth center that provides maternity and
 384 newborn care services shall ensure that all newborns are, before
 385 discharge, screened for the detection of hearing loss. The
 386 licensed birth center must ensure that all newborns who do not
 387 pass the hearing screening are referred to an audiologist, a
 388 hospital, or another newborn hearing screening provider for a
 389 test to screen for congenital cytomegalovirus before the newborn
 390 becomes 21 days of age screening for the detection of hearing
 391 loss to prevent the consequences of unidentified disorders. The
 392 referral for appointment must be made within 7 days after
 393 discharge. Written documentation of the referral must be placed
 394 in the newborn's medical chart.

395 (c) If the parent or legal guardian of the newborn objects
 396 to the screening, the screening must not be completed. In such
 397 case, the physician, midwife, or other person attending the
 398 newborn shall maintain a record that the screening has not been
 399 performed and attach a written objection that must be signed by
 400 the parent or guardian.

401 (d) For home births, the health care provider in attendance
 402 is responsible for coordination and referral to an audiologist,
 403 a hospital, or another newborn hearing screening provider. The
 404 health care provider in attendance must make the referral for
 405 appointment within 7 days after the birth. In cases in which the
 406 home birth is not attended by a health care provider, the

588-03492-23

20231548c1

newborn's primary health care provider is responsible for coordinating the referral.

(e) For home births and births in a licensed birth center, if a newborn is referred to a newborn hearing screening provider and the newborn fails the screening for the detection of hearing loss, the newborn's primary health care provider must refer the newborn for administration of a test approved by the United States Food and Drug Administration or another diagnostically equivalent test on the newborn to screen for congenital cytomegalovirus before the newborn becomes 21 days of age.

(f) All newborn and infant hearing screenings must be conducted by an audiologist, a physician, or an appropriately supervised individual who has completed documented training specifically for newborn hearing screening. Every hospital that provides maternity or newborn care services shall obtain the services of an audiologist, a physician, or another newborn hearing screening provider, through employment or contract or written memorandum of understanding, for the purposes of appropriate staff training, screening program supervision, monitoring the scoring and interpretation of test results, rendering of appropriate recommendations, and coordination of appropriate follow-up services. Appropriate documentation of the screening completion, results, interpretation, and recommendations must be placed in the medical record within 24 hours after completion of the screening procedure.

(g) The screening of a newborn's hearing must be completed before the newborn is discharged from the hospital. However, if the screening is not completed before discharge due to scheduling or temporary staffing limitations, the screening must

588-03492-23

20231548c1

be completed within 21 days after the birth. Screenings completed after discharge or performed because of initial screening failure must be completed by an audiologist, a physician, a hospital, or another newborn hearing screening provider.

(h) Each hospital shall formally designate a lead physician responsible for programmatic oversight for newborn hearing screening. Each birth center shall designate a licensed health care provider to provide such programmatic oversight and to ensure that the appropriate referrals are being completed.

(i) When ordered by the treating physician, the hearing screening of a newborn, infant, or toddler ~~newborn's hearing~~ must include auditory brainstem responses, or evoked otoacoustic emissions, or appropriate technology as approved by the United States Food and Drug Administration.

(j) Early childhood programs or entities screening infants and toddlers for hearing loss must report screening results to the department within 7 days after completing the screening in an effort to identify late-onset hearing loss not identified during the newborn hearing screening process.

(k) The results of any test conducted pursuant to this section, including, but not limited to, newborn hearing loss screening, congenital cytomegalovirus testing, and any related diagnostic testing, must be reported to the department within 7 days after receipt of such results.

(l) ~~(k)~~ The initial procedure for screening the hearing of the newborn or infant and any medically necessary follow-up reevaluations leading to diagnosis shall be a covered benefit for Medicaid patients covered by a fee-for-service program. For

588-03492-23

20231548c1

Medicaid patients enrolled in HMOs, providers shall be reimbursed directly by the Medicaid Program Office at the Medicaid rate. This service may not be considered a covered service for the purposes of establishing the payment rate for Medicaid HMOs. All health insurance policies and health maintenance organizations as provided under ss. 627.6416, 627.6579, and 641.31(30), except for supplemental policies that only provide coverage for specific diseases, hospital indemnity, or Medicare supplement, or to the supplemental policies, shall compensate providers for the covered benefit at the contracted rate. Nonhospital-based providers are eligible to bill Medicaid for the professional and technical component of each procedure code.

(m) ~~(l)~~ A child who is diagnosed as having permanent hearing loss must be referred to the primary care physician for medical management, treatment, and follow-up services. Furthermore, in accordance with Part C of the Individuals with Disabilities Education Act, Pub. L. No. 108-446, Infants and Toddlers with Disabilities, any child from birth to 36 months of age who is diagnosed as having hearing loss that requires ongoing special hearing services must be referred to the Children's Medical Services Early Intervention Program serving the geographical area in which the child resides.

Section 3. Subsection (1) of section 391.016, Florida Statutes, is amended to read:

391.016 Purposes and functions.—The Children's Medical Services program is established for the following purposes and authorized to perform the following functions:

(1) Provide to children and youth with special health care

588-03492-23

20231548c1

needs a family-centered, comprehensive, and coordinated statewide ~~managed~~ system of care that links community-based health care with multidisciplinary, regional, and tertiary pediatric specialty care. ~~The program shall coordinate and maintain a consistent medical home for participating children.~~

Section 4. Subsections (1), (2), and (4) of section 391.021, Florida Statutes, are amended to read:

391.021 Definitions.—When used in this act, the term: (2) ~~(1)~~ "Children's Medical Services Managed Care Plan network" or "plan network" means a statewide managed care service system that includes health care providers, as defined in this section.

(1) ~~(2)~~ "Children and youth with special health care needs" means those children younger than 21 years of age who have chronic and serious physical, developmental, behavioral, or emotional conditions and who require health care and related services of a type or amount beyond that which is generally required by children.

(4) "Eligible individual" means a child or youth with a special health care need or a female with a high-risk pregnancy, who meets the financial and medical eligibility standards established in s. 391.029.

Section 5. Subsection (1) of section 391.025, Florida Statutes, is amended to read:

391.025 Applicability and scope.—

(1) The Children's Medical Services program consists of the following components:

(a) The newborn screening program established in s. 383.14 and the newborn, infant, and toddler hearing screening program

588-03492-23 20231548c1

523 established in s. 383.145.

524 (b) The regional perinatal intensive care centers program

525 established in ss. 383.15-383.19.

526 (c) The developmental evaluation and intervention program,

527 including the Early Steps Program established in ss. 391.301-

528 391.308.

529 (d) The Children's Medical Services Managed Care Plan

530 network.

531 (e) The Children's Multidisciplinary Assessment Team.

532 (f) The Medical Foster Care Program.

533 (g) The Title V program for children and youth with special

534 health care needs.

535 (h) The Safety Net Program.

536 (i) The Networks for Access and Quality.

537 (j) Child Protection Teams and sexual abuse treatment

538 programs established under s. 39.303.

539 (k) The State Child Abuse Death Review Committee and local

540 child abuse death review committees established in s. 383.402.

541 Section 6. Section 391.026, Florida Statutes, is amended to

542 read:

543 391.026 Powers and duties of the department.—The department

544 shall have the following powers, duties, and responsibilities:

545 (1) To provide or contract for the provision of health

546 services to eligible individuals.

547 (2) To provide services to abused and neglected children

548 through Child Protection Teams pursuant to s. 39.303.

549 (3) To determine the medical and financial eligibility of

550 individuals seeking health services from the program.

551 (4) To coordinate a comprehensive delivery system for

588-03492-23 20231548c1

552 eligible individuals to take maximum advantage of all available

553 funds.

554 (5) To coordinate with programs relating to children's

555 medical services in cooperation with other public and private

556 agencies.

557 (6) To initiate and coordinate applications to federal

558 agencies and private organizations for funds, services, or

559 commodities relating to children's medical programs.

560 (7) To sponsor or promote grants for projects, programs,

561 education, or research in the field of children and youth with

562 special health care needs, with an emphasis on early diagnosis

563 and treatment.

564 (8) To oversee and operate the Children's Medical Services

565 Managed Care Plan network.

566 (9) To establish reimbursement mechanisms for the

567 Children's Medical Services Managed Care Plan network.

568 (10) To establish Children's Medical Services Managed Care

569 Plan network standards and, if applicable, credentialing

570 requirements for health care providers and health care services.

571 ~~(11) To serve as a provider and principal case manager for~~

572 ~~children with special health care needs under Titles XIX and XXI~~

573 ~~of the Social Security Act.~~

574 ~~(12)~~ To monitor the provision of health services in the

575 program, including the utilization and quality of health

576 services.

577 ~~(12)~~(13) To administer the Children and Youth with Special

578 Health Care Needs program in accordance with Title V of the

579 Social Security Act.

580 ~~(13)~~(14) To establish and operate a grievance resolution

588-03492-23 20231548c1

581 process for participants and health care providers.
 582 ~~(14)-(15)~~ To maintain program integrity in the Children's
 583 Medical Services program.
 584 ~~(15)-(16)~~ To receive and manage health care premiums,
 585 capitation payments, and funds from federal, state, local, and
 586 private entities for the program. The department may contract
 587 with a third-party administrator for processing claims,
 588 monitoring medical expenses, and other related services
 589 necessary to the efficient and cost-effective operation of the
 590 Children's Medical Services Managed Care Plan ~~network~~. The
 591 department is authorized to maintain a minimum reserve for the
 592 Children's Medical Services Managed Care Plan ~~network~~ in an
 593 amount that is the greater of:
 594 (a) Ten percent of total projected expenditures for Title
 595 XIX-funded and Title XXI-funded children; or
 596 (b) Two percent of total annualized payments from the
 597 Agency for Health Care Administration for Title XIX and Title
 598 XXI of the Social Security Act.
 599 ~~(16)-(17)~~ To provide or contract for peer review and other
 600 quality-improvement activities.
 601 ~~(17)-(18)~~ To adopt rules pursuant to ss. 120.536(1) and
 602 120.54 to administer the Children's Medical Services Act.
 603 ~~(18)-(19)~~ To serve as the lead agency in administering the
 604 Early Steps Program pursuant to part C of the federal
 605 Individuals with Disabilities Education Act and part III of this
 606 chapter.
 607 (19) To administer the Medical Foster Care Program,
 608 including all of the following:
 609 (a) Recruitment, training, assessment, and monitoring for

588-03492-23 20231548c1

610 the Medical Foster Care Program.
 611 (b) Monitoring access and facilitating admissions of
 612 eligible children and youth to the program and designated
 613 medical foster care homes.
 614 (c) Coordination with the Department of Children and
 615 Families and the Agency for Health Care Administration or their
 616 designees.
 617 Section 7. Section 391.028, Florida Statutes, is amended to
 618 read:
 619 391.028 Administration.—
 620 (1) The Director of Children's Medical Services must be a
 621 physician licensed under chapter 458 or chapter 459 who has
 622 specialized training and experience in the provision of health
 623 care to children and youth and who has recognized skills in
 624 leadership and the promotion of children's health programs. The
 625 director shall be the deputy secretary and the Deputy State
 626 Health Officer for Children's Medical Services and is appointed
 627 by and reports to the State Surgeon General. The director may
 628 appoint such other staff as necessary for the operation of the
 629 program subject to the approval of the State Surgeon General.
 630 (2) The director shall provide for an operational system
 631 using such department staff and contract providers as necessary.
 632 The program shall implement all of the following program
 633 activities under physician supervision on a statewide basis:
 634 (a) ~~Case management services for network participants,~~
 635 ~~(b)~~ Management and oversight of statewide ~~local~~ program
 636 activities.
 637 (b)(c) Medical and financial eligibility determination for
 638 the program in accordance with s. 391.029.
 639

588-03492-23

20231548c1

639 ~~(c)(d)~~ Determination of a level of care and medical
640 complexity for long-term care services.

641 ~~(d)(e)~~ Authorizing services in the program and developing
642 spending plans.

643 ~~(f)~~ Development of treatment plans; and

644 ~~(e)(g)~~ Resolution of complaints and grievances from
645 participants and health care providers.

646 ~~(3) Each Children's Medical Services area office shall be~~
647 ~~directed by a physician licensed under chapter 458 or chapter~~
648 ~~459 who has specialized training and experience in the provision~~
649 ~~of health care to children. The director of a Children's Medical~~
650 ~~Services area office shall be appointed by the director from the~~
651 ~~active panel of Children's Medical Services physician~~
652 ~~consultants.~~

653 Section 8. Subsections (2) and (3) of section 391.029,
654 Florida Statutes, are amended to read:

655 391.029 Program eligibility.—

656 (2) The following individuals are eligible to receive
657 services through the program:

658 (a) Related to the regional perinatal intensive care
659 centers, a high-risk pregnant female who is enrolled in
660 Medicaid.

661 (b) Children and youth with serious special health care
662 needs from birth to 21 years of age who are enrolled in
663 Medicaid.

664 (c) Children and youth with serious special health care
665 needs from birth to 19 years of age who are enrolled in a
666 program under Title XXI of the Social Security Act.

667 (3) Subject to the availability of funds, the following

588-03492-23

20231548c1

668 individuals may receive services through the program:

669 (a) Children and youth with serious special health care
670 needs from birth to 21 years of age who do not qualify for
671 Medicaid or Title XXI of the Social Security Act but who are
672 unable to access, due to lack of providers or lack of financial
673 resources, specialized services that are medically necessary or
674 essential family support services. Families shall participate
675 financially in the cost of care based on a sliding fee scale
676 established by the department.

677 (b) Children and youth with special health care needs from
678 birth to 21 years of age, as provided in Title V of the Social
679 Security Act.

680 (c) An infant who receives an award of compensation under
681 s. 766.31(1). The Florida Birth-Related Neurological Injury
682 Compensation Association shall reimburse the Children's Medical
683 Services Managed Care Plan Network the state's share of funding,
684 which must thereafter be used to obtain matching federal funds
685 under Title XXI of the Social Security Act.

686 Section 9. Section 391.0315, Florida Statutes, is amended
687 to read:

688 391.0315 Benefits.—Benefits provided under the Children's
689 Medical Services Managed Care Plan ~~program for children with~~
690 ~~special health care needs~~ shall be equivalent to benefits
691 provided to children as specified in ss. 409.905 and 409.906.
692 The department may offer additional benefits through Children's
693 Medical Services programs for early intervention services,
694 respite services, genetic testing, genetic and nutritional
695 counseling, and parent support services, if such services are
696 determined to be medically necessary.

588-03492-23

20231548c1

697 Section 10. Section 391.035, Florida Statutes, is repealed.
 698 Section 11. Section 391.045, Florida Statutes, is amended
 699 to read:

700 391.045 Reimbursement.—

701 (1) The department shall reimburse health care providers
 702 for services rendered through ~~the~~ Children's Medical Services
 703 Managed Care Plan network using cost-effective methods,
 704 including, but not limited to, capitation, discounted fee-for-
 705 service, unit costs, and cost reimbursement. Medicaid
 706 reimbursement rates shall be utilized to the maximum extent
 707 possible, where applicable.

708 (2) Reimbursement to the Children's Medical Services
 709 program for services provided to children and youth with special
 710 health care needs who participate in the Florida Kidcare program
 711 and who are not Medicaid recipients shall be on a capitated
 712 basis.

713 Section 12. Section 391.055, Florida Statutes, is amended
 714 to read:

715 391.055 Service delivery systems.—

716 (1) The program shall apply managed care methods to ensure
 717 the efficient operation of the Children's Medical Services
 718 Managed Care Plan network. Such methods include, but are not
 719 limited to, capitation payments, utilization management and
 720 review, prior authorization, and case management.

721 (2) ~~The components of the network are:~~

722 ~~(a) Qualified primary care physicians who shall serve as~~
 723 ~~the gatekeepers and who shall be responsible for the provision~~
 724 ~~or authorization of health services to an eligible individual~~
 725 ~~who is enrolled in the Children's Medical Services network.~~

588-03492-23

20231548c1

726 ~~(b) Comprehensive Specialty care arrangements that meet the~~
 727 ~~requirements of s. 391.035 to provide acute care, specialty~~
 728 ~~care, long-term care, and chronic disease management for~~
 729 ~~eligible individuals.~~

730 ~~(c) Case management services.~~

731 ~~(3)~~ The Children's Medical Services Managed Care Plan
 732 network may contract with school districts participating in the
 733 certified school match program pursuant to ss. 409.908(21) and
 734 1011.70 for the provision of school-based services, as provided
 735 for in s. 409.9071, for Medicaid-eligible children who are
 736 enrolled in the Children's Medical Services Managed Care Plan
 737 network.

738 ~~(4) If a newborn has an abnormal screening result for~~
 739 ~~metabolic or other hereditary and congenital disorders which is~~
 740 ~~identified through the newborn screening program pursuant to s.~~
 741 ~~383.14, the newborn shall be referred to the Children's Medical~~
 742 ~~Services program for additional testing, medical management,~~
 743 ~~early intervention services, or medical referral.~~

744 Section 13. Section 391.097, Florida Statutes, is amended
 745 to read:

746 391.097 Research and evaluation.—

747 (1) The department may initiate, fund, and conduct research
 748 and evaluation projects to improve the delivery of children's
 749 medical services. The department may cooperate with public and
 750 private agencies engaged in work of a similar nature.

751 (2) The Children's Medical Services Managed Care Plan
 752 network shall be included in any evaluation conducted in
 753 accordance with the provisions of Title XXI of the Social
 754 Security Act as enacted by the Legislature.

588-03492-23

20231548c1

Section 14. Part II of chapter 391, Florida Statutes, consisting of ss. 391.221 and 391.223, Florida Statutes, is repealed, and part III of that chapter is redesignated as part II.

Section 15. Legislative findings and intent.—

(1) The Legislature finds that:

(a) In August 2014, the Department of Health's Children's Medical Services Network, which was a fee-for-service program serving children with special health care needs who were enrolled in Medicaid under Title XIX of the Social Security Act and children with special health care needs who were enrolled in the Children's Health Insurance Program under Title XXI of the Social Security Act, was transitioned to the Children's Medical Services Managed Care Plan.

(b) The Agency for Health Care Administration serves as the lead agency for Statewide Medicaid Managed Care for the state of Florida, and the Agency for Health Care Administration contracts with the Department of Health to provide Medicaid services through the Children's Medical Services Managed Care Plan.

(c) The Department of Health subcontracts with a private provider to operate various components of the Children's Medical Services Managed Care Plan, including services for children with special health care needs enrolled in Medicaid and children with special health care needs enrolled in the Children's Health Insurance Program.

(d) The administrative requirements of this intermediary relationship can be addressed by transitioning the operations of the Children's Medical Services Managed Care Plan to the Agency for Health Care Administration. This transition shall include

588-03492-23

20231548c1

children with special health care needs enrolled in Medicaid and children with special health care needs enrolled in the Children's Health Insurance Program.

(e) The Department of Health's Children's Medical Services program has a longstanding history of successfully and compassionately caring for children with special health care needs and their families. This knowledge, skill, and ability can be used to collaborate with the Agency for Health Care Administration in the care of children with special health care needs.

(2) It is the intent of the Legislature that the Agency for Health Care Administration shall, in consultation with the Department of Health, competitively procure and operate one or more specialty plan contracts for children and youth with special health care needs beginning with the 2024-2025 plan year.

Section 16. Transfer of operation of the Children's Medical Services Managed Care Plan.—

(1) Effective October 1, 2024, all statutory powers, duties, functions, records, personnel, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the operation of the Department of Health's Children's Medical Services Managed Care Plan, except those powers, duties, and personnel retained by the Department of Health in chapter 391, Florida Statutes, are transferred to the Agency for Health Care Administration.

(2) The transfer of operations of the Children's Medical Services Managed Care Plan does not affect the validity of any

588-03492-23

20231548c1

813 judicial or administrative action pending as of 11:59 p.m. on
 814 the day before the effective date of the transfer to which the
 815 Department of Health's Children's Medical Services Managed Care
 816 Plan is at that time a party, and the Agency for Health Care
 817 Administration shall be substituted as a party in interest in
 818 any such action.

819 (3) The Department of Health's Children's Medical Services
 820 program shall use its knowledge, skill, and ability to
 821 collaborate with the Agency for Health Care Administration in
 822 the care of children with special health care needs. The
 823 Department of Health's Children's Medical Services program shall
 824 do all of the following:

825 (a) Assist the agency in developing specifications for use
 826 in the procurement of vendors and the model contract, including
 827 provisions relating to referral, enrollment, disenrollment,
 828 access, quality-of-care, network adequacy, care coordination,
 829 and service integration.

830 (b) Conduct clinical eligibility screening for children
 831 with special health care needs who are eligible for or enrolled
 832 in Medicaid or the Children's Health Insurance Program.

833 (c) Collaborate with the agency in the care of children
 834 with special health care needs.

835 Section 17. By November 1, 2023, the Agency for Health Care
 836 Administration and the Department of Health shall submit to each
 837 substantive and fiscal committee of the Legislature having
 838 jurisdiction a report specifying any legislative and
 839 administrative changes needed to effectively transfer operations
 840 of the Children's Medical Services Managed Care Plan from the
 841 department to the agency.

588-03492-23

20231548c1

842 Section 18. Subsection (4) of section 409.974, Florida
 843 Statutes, is amended to read:

844 409.974 Eligible plans.—

845 (4) CHILDREN'S MEDICAL SERVICES NETWORK.—The Agency for
 846 Health Care Administration shall competitively procure one or
 847 more vendors to provide services for children with special
 848 health care needs who are enrolled in Medicaid and children with
 849 special health care needs who are enrolled in the Children's
 850 Health Insurance Program for the 2024-2025 plan year. The
 851 Department of Health's Children's Medical Services program shall
 852 do all of the following:

853 (a) Assist the agency in developing specifications for use
 854 in the procurement of vendors and the model contract, including
 855 provisions relating to referral, enrollment, disenrollment,
 856 access, quality-of-care, network adequacy, care coordination,
 857 and service integration.

858 (b) Conduct clinical eligibility screening for children
 859 with special health care needs who are eligible for or are
 860 enrolled in Medicaid or the Children's Health Insurance Program.

861 (c) Collaborate with the agency in the care of children
 862 with special health care needs. Participation by the Children's
 863 Medical Services Network shall be pursuant to a single,
 864 statewide contract with the agency that is not subject to the
 865 procurement requirements or regional plan number limits of this
 866 section. The Children's Medical Services Network must meet all
 867 other plan requirements for the managed medical assistance
 868 program.

869 Section 19. Effective October 1, 2024, paragraph (f) of
 870 subsection (4) and paragraph (b) of subsection (5) of section

588-03492-23

20231548c1

871 409.166, Florida Statutes, are amended to read:

872 409.166 Children within the child welfare system; adoption
873 assistance program.—

874 (4) ADOPTION ASSISTANCE.—

875 (f) The department may provide adoption assistance to the
876 adoptive parents, subject to specific appropriation, for medical
877 assistance initiated after the adoption of the child for
878 medical, surgical, hospital, and related services needed as a
879 result of a physical or mental condition of the child which
880 existed before the adoption and is not covered by Medicaid,
881 ~~Children's Medical Services~~, or Children's Mental Health
882 Services. Such assistance may be initiated at any time but must
883 ~~shall~~ terminate on or before the child's 18th birthday.

884 (5) ELIGIBILITY FOR SERVICES.—

885 (b) A child who is handicapped at the time of adoption is
886 ~~shall be~~ eligible for services through a specialty plan under
887 contract with the agency to serve children with special health
888 care needs the Children's Medical Services network established
889 under part I of chapter 391 if the child was eligible for such
890 services before ~~prior to~~ the adoption.

891 Section 20. Subsection (7) of section 409.811, Florida
892 Statutes, is amended to read:

893 409.811 Definitions relating to Florida Kidcare Act.—As
894 used in ss. 409.810-409.821, the term:

895 (7) "Children's Medical Services Managed Care Plan Network"
896 or "plan network" means a statewide managed care service system
897 as defined in s. 391.021 ~~s. 391.021(1)~~.

898 Section 21. Effective October 1, 2024, subsection (1) of
899 section 409.813, Florida Statutes, is amended to read:

588-03492-23

20231548c1

900 409.813 Health benefits coverage; program components;
901 entitlement and nonentitlement.—

902 (1) The Florida Kidcare program includes health benefits
903 coverage provided to children through the following program
904 components, which shall be marketed as the Florida Kidcare
905 program:

906 (a) Medicaid;

907 (b) Medikids as created in s. 409.8132;

908 (c) The Florida Healthy Kids Corporation as created in s.
909 624.91;

910 (d) Employer-sponsored group health insurance plans
911 approved under ss. 409.810-409.821; and

912 (e) A specialty plan under contract with the agency to
913 serve children with special health care needs ~~The Children's~~
914 ~~Medical Services network established in chapter 391.~~

915 Section 22. Effective October 1, 2024, subsection (3) of
916 section 409.8134, Florida Statutes, is amended to read:

917 409.8134 Program expenditure ceiling; enrollment.—

918 (3) Upon determination by the Social Services Estimating
919 Conference that there are insufficient funds to finance the
920 current enrollment in the Florida Kidcare program within current
921 appropriations, the program shall initiate disenrollment
922 procedures to remove enrollees, except those children enrolled
923 in a specialty plan under contract with the agency to serve
924 children with special health care needs ~~the Children's Medical~~
925 ~~Services Network~~, on a last-in, first-out basis until the
926 expenditure and appropriation levels are balanced.

927 Section 23. Subsection (3) and paragraph (c) of subsection
928 (10) of section 409.814, Florida Statutes, are amended to read:

588-03492-23

20231548c1

409.814 Eligibility.—A child who has not reached 19 years of age whose family income is equal to or below 200 percent of the federal poverty level is eligible for the Florida Kidcare program as provided in this section. If an enrolled individual is determined to be ineligible for coverage, he or she must be immediately disenrolled from the respective Florida Kidcare program component.

(3) A Title XXI-funded child who is eligible for the Florida Kidcare program who is a child with special health care needs, as determined through a medical or behavioral screening instrument, is eligible for health benefits coverage from and shall be assigned to and may opt out of a specialty plan under contract with the agency to serve children with special health care needs ~~the Children's Medical Services Network~~.

(10) In determining the eligibility of a child, an assets test is not required. Each applicant shall provide documentation during the application process and the redetermination process, including, but not limited to, the following:

(c) To enroll in a specialty plan under contract with the agency to serve children with special health care needs ~~the Children's Medical Services Network~~, a completed application, including a clinical screening.

Section 24. Effective October 1, 2024, paragraph (t) of subsection (2) of section 409.815, Florida Statutes, is amended to read:

409.815 Health benefits coverage; limitations.—

(2) BENCHMARK BENEFITS.—In order for health benefits coverage to qualify for premium assistance payments for an eligible child under ss. 409.810-409.821, the health benefits

588-03492-23

20231548c1

coverage, except for coverage under Medicaid and Medikids, must include the following minimum benefits, as medically necessary.

(t) *Enhancements to minimum requirements.*—

1. This section sets the minimum benefits that must be included in any health benefits coverage, other than Medicaid or Medikids coverage, offered under ss. 409.810-409.821. Health benefits coverage may include additional benefits not included under this subsection, but may not include benefits excluded under paragraph (r).

2. Health benefits coverage may extend any limitations beyond the minimum benefits described in this section.

Except for a specialty plan under contract with the agency to serve children with special health care needs ~~the Children's Medical Services Network~~, the agency may not increase the premium assistance payment for either additional benefits provided beyond the minimum benefits described in this section or the imposition of less restrictive service limitations.

Section 25. Effective October 1, 2024, paragraph (i) of subsection (1) of section 409.8177, Florida Statutes, is amended to read:

409.8177 Program evaluation.—

(1) The agency, in consultation with the Department of Health, the Department of Children and Families, and the Florida Healthy Kids Corporation, shall contract for an evaluation of the Florida Kidcare program and shall by January 1 of each year submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report of the program. In addition to the items specified under s. 2108 of Title XXI of

588-03492-23

20231548c1

the Social Security Act, the report shall include an assessment of crowd-out and access to health care, as well as the following:

(i) An assessment of the effectiveness of the Florida Kidcare program, including Medicaid, the Florida Healthy Kids program, Medikids, and the specialty plans under contract with the agency to serve children with special health care needs ~~Children's Medical Services network~~, and other public and private programs in the state in increasing the availability of affordable quality health insurance and health care for children.

Section 26. Effective October 1, 2024, subsection (4) of section 409.818, Florida Statutes, is amended to read:

409.818 Administration.—In order to implement ss. 409.810-409.821, the following agencies shall have the following duties:

(4) The Office of Insurance Regulation shall certify that health benefits coverage plans that seek to provide services under the Florida Kidcare program, except those offered through the Florida Healthy Kids Corporation ~~or the Children's Medical Services Network~~, meet, exceed, or are actuarially equivalent to the benchmark benefit plan and that health insurance plans will be offered at an approved rate. In determining actuarial equivalence of benefits coverage, the Office of Insurance Regulation and health insurance plans must comply with the requirements of s. 2103 of Title XXI of the Social Security Act. The department shall adopt rules necessary for certifying health benefits coverage plans.

Section 27. Effective October 1, 2024, subsection (11) of section 409.912, Florida Statutes, is amended to read:

588-03492-23

20231548c1

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. s. 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy

588-03492-23

20231548c1

1045 management, or disease management participation for certain
 1046 populations of Medicaid beneficiaries, certain drug classes, or
 1047 particular drugs to prevent fraud, abuse, overuse, and possible
 1048 dangerous drug interactions. The Pharmaceutical and Therapeutics
 1049 Committee shall make recommendations to the agency on drugs for
 1050 which prior authorization is required. The agency shall inform
 1051 the Pharmaceutical and Therapeutics Committee of its decisions
 1052 regarding drugs subject to prior authorization. The agency is
 1053 authorized to limit the entities it contracts with or enrolls as
 1054 Medicaid providers by developing a provider network through
 1055 provider credentialing. The agency may competitively bid single-
 1056 source-provider contracts if procurement of goods or services
 1057 results in demonstrated cost savings to the state without
 1058 limiting access to care. The agency may limit its network based
 1059 on the assessment of beneficiary access to care, provider
 1060 availability, provider quality standards, time and distance
 1061 standards for access to care, the cultural competence of the
 1062 provider network, demographic characteristics of Medicaid
 1063 beneficiaries, practice and provider-to-beneficiary standards,
 1064 appointment wait times, beneficiary use of services, provider
 1065 turnover, provider profiling, provider licensure history,
 1066 previous program integrity investigations and findings, peer
 1067 review, provider Medicaid policy and billing compliance records,
 1068 clinical and medical record audits, and other factors. Providers
 1069 are not entitled to enrollment in the Medicaid provider network.
 1070 The agency shall determine instances in which allowing Medicaid
 1071 beneficiaries to purchase durable medical equipment and other
 1072 goods is less expensive to the Medicaid program than long-term
 1073 rental of the equipment or goods. The agency may establish rules

Page 37 of 40

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03492-23

20231548c1

1074 to facilitate purchases in lieu of long-term rentals in order to
 1075 protect against fraud and abuse in the Medicaid program as
 1076 defined in s. 409.913. The agency may seek federal waivers
 1077 necessary to administer these policies.

1078 (11) The agency shall implement a program of all-inclusive
 1079 care for children. The program of all-inclusive care for
 1080 children shall be established to provide in-home hospice-like
 1081 support services to children diagnosed with a life-threatening
 1082 illness ~~and enrolled in the Children's Medical Services network~~
 1083 to reduce hospitalizations as appropriate. The agency, in
 1084 consultation with the Department of Health, may implement the
 1085 program of all-inclusive care for children after obtaining
 1086 approval from the Centers for Medicare and Medicaid Services.

1087 Section 28. Effective October 1, 2024, subsection (1) of
 1088 section 409.9126, Florida Statutes, is amended to read:

1089 409.9126 Children with special health care needs.—

1090 (1) Except as provided in subsection (4), children eligible
 1091 for Children's Medical Services who receive Medicaid benefits,
 1092 and other Medicaid-eligible children with special health care
 1093 needs, are ~~shall be~~ exempt from ~~the provisions of~~ s. 409.9122
 1094 ~~and shall be served through the Children's Medical Services~~
 1095 ~~network established in chapter 391.~~

1096 Section 29. Effective October 1, 2024, paragraph (a) of
 1097 subsection (5) of section 409.9131, Florida Statutes, is amended
 1098 to read:

1099 409.9131 Special provisions relating to integrity of the
 1100 Medicaid program.—

1101 (5) DETERMINATIONS OF OVERPAYMENT.—In making a
 1102 determination of overpayment to a physician, the agency must:

Page 38 of 40

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03492-23

20231548c1

1103 (a) Use accepted and valid auditing, accounting,
 1104 analytical, statistical, or peer-review methods, or combinations
 1105 thereof. Appropriate statistical methods may include, but are
 1106 not limited to, sampling and extension to the population,
 1107 parametric and nonparametric statistics, tests of hypotheses,
 1108 other generally accepted statistical methods, review of medical
 1109 records, and a consideration of the physician's client case mix.
 1110 Before performing a review of the physician's Medicaid records,
 1111 however, the agency shall make every effort to consider the
 1112 physician's patient case mix, including, but not limited to,
 1113 patient age and whether individual patients are clients of the
 1114 ~~Children's Medical Services Network established in chapter 391.~~
 1115 In meeting its burden of proof in any administrative or court
 1116 proceeding, the agency may introduce the results of such
 1117 statistical methods and its other audit findings as evidence of
 1118 overpayment.

1119 Section 30. Effective October 1, 2024, paragraph (e) of
 1120 subsection (1) of section 409.920, Florida Statutes, is amended
 1121 to read:

1122 409.920 Medicaid provider fraud.—

1123 (1) For the purposes of this section, the term:

1124 (e) "Managed care plans" means a health insurer authorized
 1125 under chapter 624, an exclusive provider organization authorized
 1126 under chapter 627, a health maintenance organization authorized
 1127 under chapter 641, ~~the Children's Medical Services Network~~
 1128 ~~authorized under chapter 391,~~ a prepaid health plan authorized
 1129 under this chapter, a provider service network authorized under
 1130 this chapter, a minority physician network authorized under this
 1131 chapter, and an emergency department diversion program

588-03492-23

20231548c1

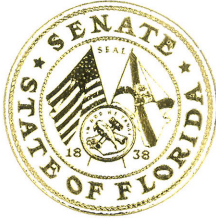
1132 authorized under this chapter or the General Appropriations Act,
 1133 providing health care services pursuant to a contract with the
 1134 Medicaid program.

1135 Section 31. Effective October 1, 2024, subsection (7) of
 1136 section 409.962, Florida Statutes, is amended to read:

1137 409.962 Definitions.—As used in this part, except as
 1138 otherwise specifically provided, the term:

1139 (7) "Eligible plan" means a health insurer authorized under
 1140 chapter 624, an exclusive provider organization authorized under
 1141 chapter 627, a health maintenance organization authorized under
 1142 chapter 641, or a provider service network authorized under s.
 1143 409.912(1) or an accountable care organization authorized under
 1144 federal law. For purposes of the managed medical assistance
 1145 program, the term also includes ~~the Children's Medical Services~~
 1146 ~~Network authorized under chapter 391~~ and entities qualified
 1147 under 42 C.F.R. part 422 as Medicare Advantage Preferred
 1148 Provider Organizations, Medicare Advantage Provider-sponsored
 1149 Organizations, Medicare Advantage Health Maintenance
 1150 Organizations, Medicare Advantage Coordinated Care Plans, and
 1151 Medicare Advantage Special Needs Plans, and the Program of All-
 1152 inclusive Care for the Elderly.

1153 Section 32. Except as otherwise expressly provided in this
 1154 act, this act shall take effect July 1, 2023.



SENATOR JENNIFER BRADLEY
6th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Committee on Criminal
and Civil Justice, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Appropriations Committee on Health
and Human Services
Children, Families, and Elder Affairs
Community Affairs
Regulated Industries

SELECT COMMITTEE:

Select Committee on Resiliency

April 5, 2023

Senator Gayle Harrell, Chair
Appropriations Committee on Health and Human Services
414 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Harrell:

I respectfully request that CS/SB 1548 be placed on the committee's agenda at your earliest convenience. This bill relates to children's medical services program.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Bradley".

Jennifer Bradley

cc: Tonya Money, Staff Director
Robin Jackson, Administrative Assistant

REPLY TO:

- ☐ 1845 East West Parkway, Suite 5, Fleming Island, Florida 32003 (904) 278-2085
- ☐ 124 Northwest Madison Street, Lake City, Florida 32055 (386) 719-2708
- ☐ 410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

4/18/23

Meeting Date

Approps HHS

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1548 Tab 10

Bill Number or Topic

Amendment Barcode (if applicable)

Name Alba-Harper Fisher-Diim Phone (904) 343-1053

Address 126 Coastline Way Email _____
Street

St. Augustine FL 32092
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/18/23

Meeting Date

1548 Tab 10

Bill Number or Topic

Amendment Barcode (if applicable)

Committee

Name Audrey-Carissa Fisher-Dinu Phone _____

Address 126 Coastline Way Email _____

Street

St. Augustine FL 32092

City

State

Zip

Speaking:

☒ For

☐ Against

☐ Information

OR

Waive Speaking:

☒ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Liliana Dinu

Phone

(904)-343-1053

Address

126 Coastline Way

Email

lilianadinu@hotmail.com

Street

St. Augustine FL

32092

City

State

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Meeting Date

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Phone

Address

Street

Email

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

① DEAF Kids Can

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

CourtSmart Tag Report

Room: KB 412

Case No.: -

Type:

Caption: Senate Appropriations Committee on Health and Human Services

Judge:

Started: 4/18/2023 8:32:37 AM

Ends: 4/18/2023 10:30:41 AM

Length: 01:58:05

8:32:42 AM	Sen. Harrell (Chair)
8:33:54 AM	S 1084
8:33:57 AM	Sen. Trumbull
8:34:13 AM	Am. 650886
8:34:19 AM	Sen. Trumbull
8:36:39 AM	S 1084 (Cont.)
8:36:50 AM	Sen. Davis
8:37:31 AM	Sen. Trumbull
8:38:46 AM	Sen. Davis
8:39:46 AM	Sen. Trumbull
8:41:45 AM	Sen. Davis
8:42:07 AM	Sen. Harrell
8:43:56 AM	Sen. Davis
8:44:20 AM	Sen. Trumbull
8:44:44 AM	Sen. Book
8:44:59 AM	Sen. Trumbull
8:45:42 AM	Sen. Book
8:46:08 AM	Sen. Trumbull
8:47:22 AM	Sen. Burton
8:48:05 AM	Sen. Trumbull
8:48:25 AM	Ryan Chandler
8:50:28 AM	Olivia Babis, Disability Rights FL
8:53:22 AM	Anay Abraham (waives in support)
8:53:56 AM	JJ Holmes
8:57:06 AM	Alison Holmes
9:00:07 AM	Sen. Baxley
9:04:18 AM	Sen. Book
9:05:57 AM	Sen. Burton
9:07:51 AM	Sen. Brodeur
9:09:53 AM	Sen. Davis
9:11:27 AM	Sen. Harrell
9:14:04 AM	Sen. Trumbull
9:17:02 AM	S 858
9:17:10 AM	Sen. Torres
9:18:12 AM	Bob Aszatlus, Florida Department of Veteran Affairs (waives in support)
9:18:35 AM	Sen. Torres
9:19:34 AM	S 272
9:19:38 AM	Sen. Garcia
9:20:57 AM	Am. 633058
9:21:03 AM	Sen. Garcia
9:21:29 AM	Am. 415676
9:22:56 AM	Am. 633058 (cont.)
9:23:36 AM	Rebekka Behr, Florida Youth SHINE
9:26:17 AM	Lavarian Ouma, Florida Youth SHINE
9:28:27 AM	Taylor Woodruff, Embrace Families (waives in support)
9:28:46 AM	Sen. Harrell
9:29:51 AM	Sen. Garcia
9:30:31 AM	S 1540
9:30:37 AM	Sen. Garcia
9:32:42 AM	Jason Hand, Florida Senior Living Association (waives in support)
9:33:01 AM	Greg Black, Elder Law Section of the Florida Bar (waives in support)
9:33:20 AM	Karen Murillo, AARP (waives in support)

9:33:30 AM	Sen. Garcia
9:33:51 AM	S 1542
9:33:58 AM	Sen. Garcia
9:34:44 AM	Karen Murillo, AARP (waives in support)
9:35:01 AM	Sen. Garcia
9:35:43 AM	S 1548
9:35:47 AM	Sen. Bradley
9:36:49 AM	Alba-Harper Fisher-Dinu
9:36:50 AM	Audrey-Carissa Fisher-Dinu
9:38:18 AM	Sen. Book
9:39:09 AM	Lihana Dinu
9:39:22 AM	Theresa Bulger, Deaf Kids Can (waives in support)
9:40:21 AM	S 366
9:40:44 AM	Sen. Burgess
9:41:50 AM	Bob Asztalus, Florida Department of Veteran Affairs (waives in support)
9:42:17 AM	Alexandra Abboud, Florida Dental Association (waives in support)
9:42:30 AM	Sen. Burgess
9:43:05 AM	S 1338
9:43:10 AM	Sen. Martin
9:43:50 AM	Am. 265348
9:43:57 AM	Sen. Martin
9:44:35 AM	Am. 258224
9:45:09 AM	S 1338 (cont.)
9:45:30 AM	Laura Donaldson, Collier County Sheriff's Office (waives in support)
9:45:51 AM	Erin Ballas, American Massage Therapy Association (waives in support)
9:46:17 AM	Sen. Martin
9:46:44 AM	S 344
9:46:47 AM	Sen. Brodeur
9:47:40 AM	Dr. Tyron Hoover
9:57:15 AM	Sen. Burton
9:58:37 AM	T. Hoover
9:59:16 AM	Sen. Garcia
10:00:17 AM	T. Hoover
10:00:54 AM	Sen. Garcia
10:01:25 AM	Sen. Osgood
10:01:41 AM	T. Hoover
10:01:56 AM	Sen. Osgood
10:02:25 AM	T. Hoover
10:02:30 AM	Sen. Davis
10:03:10 AM	T. Hoover
10:04:27 AM	Sen. Garcia
10:04:34 AM	T. Hoover
10:04:54 AM	Sen. Martin
10:05:00 AM	T. Hoover
10:05:10 AM	Sen. Harrell
10:05:16 AM	Ron Watson, Muv Dispensary (waives in support)
10:05:44 AM	Barton Hershfield
10:14:31 AM	Cathyann Hershfield
10:19:17 AM	Dr. Asay Desai
10:21:09 AM	Sen. Book
10:22:21 AM	Sen. Davis
10:23:36 AM	Sen. Garcia
10:24:36 AM	Sen. Harrell
10:26:32 AM	Sen. Brodeur
10:29:26 AM	S 268
10:29:33 AM	Sen. Brodeur
10:29:51 AM	Sen. Rouson
10:30:10 AM	Sen. Harrell